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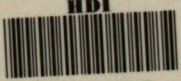
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PROCEEDINGS

OF THE

SIXTH ANNUAL MEETING

OF THE

ARKANSAS STATE BAR ASSOCIATION

HELD AT

LITTLE ROCK, ARK.,

Wednesday, Jan. 5, 1886.



LITTLE ROCK, ARK.
GAZETTE PRINTING CO.

1887.

BAR MEETING

The sixth annual meeting of the Arkansas State Bar Association was held in the United States Court-room, in the City of Little Rock, beginning at 10 o'clock, a. m., Wednesday, the 5th day of January, 1887. The following proceedings were had, to-wit :

The Association was called to order by the President, J. M. Hewitt.

The annual address of the President was omitted.

In the absence of the Secretary, J. M. Stayton was elected Secretary *pro tem*.

The reports of the Secretary and Treasurer were postponed until the afternoon session.

The Committee on Judicial Administration, by G. B. Rose, made report as follows :

Your committee respectfully call the attention of the Association to a few defects that they have particularly noticed in our system of administration.

I.

We think that the statute authorizing the sale of property of the minors and deceased persons for reinvestment is pernicious, and should be repealed. Any one familiar with our reports must be struck with the innumerable wrecks of orphan's and decedents' estates with which they are strewn. Apparently few orphans receive upon attaining their majority any part of the ancestral inheritance. The personal property necessarily disappears, and it is perhaps impossible to devise any system of laws which will secure that or its avails to the minor. It is therefore the more necessary to protect the real

estate. That is tangible, immovable, and, to a certain extent, unchangeable, so that it is possible by judicious legislation to secure it from the machinations of administrators and guardians. The original acts entrusted the latter with all the power which could be safely placed in their hands. They allowed the alienation of the real estate whenever that became necessary either for the education or the support of the minor, or for the payment of the debts of the decedent, and this is as far as the law should ever go. But a time must have come when some guardian or administrator had in his hands an estate whose income was ample for the support and education of the minor, and against which no debts could be trumped up, so that there was no excuse for a sale. The fields were fair and large, and the trustee's heart yearned for their possession. He pondered over it a long time, and at length devised this act. Under it he sold the land for reinvestment ; his friends bought it for him, and when the minor arrived of age he found himself a beggar. Such we may suppose to have been the origin of this statute. An Act giving greater opportunities for defrauding and robbing widows and orphans could not be devised by human ingenuity, and your committee respectfully report that they conceive it to be a blot upon our laws which should be effaced without delay.

They, therefore recommend the passage of the following Act :

"Be it enacted by the General Assembly of the State of Arkansas that Sections 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 3509, 3510 and 3511 of Mansfield's Digest be, and the same are hereby repealed."

II.

Another defect to which we wish to call your attention is our rule in reference to suits on the bonds of executors and administrators. Under our decisions administrators *de bonis non* have no authority to bring an action against their predecessors. That can be done only by the heirs, devisees,

legatees and creditors. If the estate has been maladministered, each person who has sustained an injury must bring a separate action; nor are any means provided for securing their respective rights except by bringing suit against each other. If the heir sues, the legatee is not a party; and consequently the heir frequently recovers what belongs to the legatee, and then the legatee sues the heir. Then some creditor sues the legatee and gets what the heir has been forced to pay him. The other creditors then sue this creditor for a division of the spoil; and so the contest goes on indefinitely, no means of adjusting the rights of the several parties being afforded by the law.

This unseemly state of affairs could be easily remedied. If the administrator *de bonis non* could bring the action on the bond and hold the proceeds recovered as assets of the estate, the distribution could be effected expeditiously and without unnecessary expense. Your committee, therefore, recommend the passage of an Act in substance as follows:

"Be it enacted by the General Assembly of the State of Arkansas: That all actions against executors and administrators for non-feasance or mis-feasance in office, or upon their bonds, shall be brought by a new administrator, to be appointed in the manner now provided by law, and the proceeds derived therefrom shall be assets in the hands of such new administrator, to be by him distributed under the orders of the Court to such persons as may be legally entitled thereto."

III.

An Act prepared by this Association permitting defendants in criminal cases to testify was passed by the Legislature. The Supreme Court has decided that that Act does not authorize the introduction of the testimony of a co-defendant, jointly indicted. It is submitted that this is an invidious and illogical exception to the general rule, and your committee, therefore, have prepared the following Act:

"Be it enacted by the General Assembly of the State of Arkansas, that accomplices and defendants jointly indicted

or tried in criminal cases shall be competent witnesses for and against each other."

IV.

No adequate remedy is provided by Statute for the enforcement of garnishments issued in attachment cases. If the garnishee does not voluntarily appear and answer the attachment, the Court is powerless; and the only remedy of the plaintiff is to bring a separate action against him. This involves an unnecessary and frequently a ruinous expense.

Your committee, therefore, recommend the following Act:

"Be it enacted by the General Assembly of the State of Arkansas, that in all cases where the garnishee fails to answer a garnishment issued in attachment cases, on or before the third day of the return term, the creditor shall be entitled to a judgment against him for the costs of the garnishment and for such sum as he may show to be due by said garnishee to the attachment defendant; execution upon such judgment to be stayed until the attachment against the principal defendant has been sustained, and judgment rendered against him in the action; the judgment against the garnishee to be set aside as of course whenever the plaintiff's attachment is dissolved, or judgment is rendered for the defendant."

V.

Under our law, if the garnishee in a proceeding by judicial garnishment fails to answer, judgment is rendered against him for the entire debt due from the principal defendant. This Act is unjust, and imposes an unreasonable and excessive penalty for a fault which is usually the result of ignorance or negligence alone.

Your committee, therefore, recommend the following Act:

"Be it enacted by the General Assembly of the State of Arkansas, that upon a default of answer on the part of the defendant in a proceeding by judicial garnishment judgment shall be rendered against the garnishee only for the costs of

the proceeding and for such sum as the plaintiff may show to be owing from the garnishee to the principal defendant."

VI.

No proper means of securing to creditors the choses in action of insolvent debtors is provided. The process of garnishing each separate debtor of the principal debtor is so expensive that the proceeds are seldom sufficient to pay the costs. It has therefore been generally abandoned by the profession. Nor can the principal debtor enforce the obligations, for his debtors know that he is not justly entitled to the money and will not pay it without suit, and he knows that if he recovers anything in an action, it will be taken from him by the creditors. The result is that when a merchant fails, all his choses in action are virtually lost.

Your committee, therefore, recommend the following Act:

"Be it enacted by the General Assembly of the State of Arkansas, that in all cases where attachments or executions are issued against persons engaged in mercantile business, it shall be the duty of the court, upon its appearing that the tangible assets subject to seizure under such executions or attachments are insufficient to satisfy the same, upon application of the attachment or execution plaintiff, to appoint a receiver, who shall take charge of the notes and accounts and choses in action of the defendant and reduce the same into money, which shall be held subject to the orders of the Court."

VII.

The want of a proper statute on the subject of *lis pendens* is a great defect in our law. Parties are conclusively presumed to know all that is going on in the courts, when every one concedes that this is impossible. A law which demands impossibilities is unjust.

Your committee, therefore, recommend the following Act:

"Be it enacted by the General Assembly of the State of Arkansas, that no person shall be affected with constructive

notice of the pendency of a suit at law or in equity unless there is filed in the office of recorder of the county in which the property involved is situated a notice of *lis pendens* under the certificate of the clerk of the Court or the justice of the peace before whom the action is pending, which may be in the following form :

This is to certify that there is pending in the
 Court [or before Justice of
 the Peace for Township, ...
 County] a suit wherein is plaintiff
 and is defendant, involving the
 following property :

[L. S.] Witness my hand and (official seal) this
 day of 18 ..
 Clerk [or Justice.]

“ Which certificate shall be recorded by the recorder in a book to be kept for that purpose. The officer granting the certificate shall be entitled to a fee of seventy-five cents therefor, and the recorder to a like sum for recording it.”

VIII.

By our law every one prosecuting an appeal to the Supreme Court must, in addition to legal interest, pay a penalty of ten per cent. upon the judgment superceded. This is very proper in delay cases; but it is a great hardship where persons have taken their appeals in good faith. The law is too uncertain to justify the infliction of an arbitrary penalty for every honest mistake.

Your committee, therefore, recommend the following Act :

“Be it enacted by the General Assembly of the State of Arkansas: That in case of appeals to the Supreme Court, with supersedeas, it shall be in the discretion of the court to adjudge against the appellant and his sureties, damages not exceeding fifteen per centum of the amount involved, in case they find the appeal to have been taken unreasonably or for

purpose of delay. Sec. 1312 of Mansfield's Digest is hereby repealed."

IX.

The supersedeas bond in cases of appeals to the Supreme Court is not conditioned that the appellant shall prosecute his appeal, without delay. This enables him frequently to escape for a long period from the payment of the judgment without giving the appellee any redress.

Your committee, therefore, recommend the following Act:

"Be it enacted by the General Assembly of the State of Arkansas, that supersedeas bonds in cases of appeals to the Supreme Court shall be conditioned as follows: That the appellant shall prosecute his appeal to judgment without delay; shall pay the appellee all costs and damages that shall be adjudged against the appellant on the appeal; also that he will satisfy the judgment or order appealed from, in case it should be affirmed, and any judgment or order that the Supreme Court may render, or order to be rendered by the inferior Court, not exceeding in amount or value the original judgment or order, and all rents and damages to property pending the appeal, of which the appellee is kept out of possession by reason of the appeal. Provided, that supersedeas bonds given by executors and administrators shall be in the form now prescribed by law."

The only power that Courts have to assess summarily the damages resulting from an injunction is in cases where a judgment has been enjoined. It is apparent that the Court in which the suit is pending is in a better position to determine the amount of damages than any other tribunal, and that it is an unnecessary hardship upon the parties to put them to the expense of a separate action on the bond.

Your committee, therefore, recommend that the statute now in force be re-enacted, with the restrictive clause omitted, as follows:

"Be it enacted by the General Assembly of the State of

Arkansas, that upon the dissolution in whole or in part of any injunction, the damages shall be assessed by the Court, which may hear the evidence, and decide in a summary way, or may, at its discretion, cause a jury to be impaneled to find the damages."

XI.

We regard the condition of our attachment laws as very unsatisfactory. The result of allowing the first attaching creditor to take all the attached property practically operates not as a reward for diligence, but as an incentive to false swearing, and to a continual, and, too frequently, an unprofessional abuse of the process. It is ruinous alike to debtor and creditor. The assets are so wasted that while one of the creditors perhaps gets his debt in full, the majority receive nothing at all on their claims, and the fear that some other creditor will attach leads to innumerable attachments against debtors who are embarrassed, but who, if left to themselves, would pay their debts. The result is a constant fear on the part of debtor and creditor alike, precipitating innumerable failures which would otherwise never occur.

Your committee, therefore, recommend the following Act:

A bill to be entitled "An Act to prevent preferences of creditors by insolvent debtors, and for other purposes."

Be it enacted by the General Assembly of the State of Arkansas.

SECTION 1. That all preferences, and provisions exacting releases, in assignments for the benefit of creditors, shall hereafter be void, and such assignment shall operate so as to give each creditor an equal *pro rata* in the proceeds thereof. #

SEC. 2. That hereafter all general attachments of the property of insolvent debtors shall operate, if sustained, so as to give all creditors of the defendant in the attachment, who shall comply with the requirements of the next section, an equal *pro rata* in the distribution of the proceeds of all property of the said defendant seized on orders of attachment or garnishment.

SEC. 3. That when one or more orders of attachment have been sued out against a debtor, any other creditor of said debtor who shall, within sixty days from the issuance of the first attachment, file his claim in the Court in which said attachment was sued out, with a statement in writing under oath of the amount due or to become due and that he desires to participate in the proceeds of the property attached, and shall file a bond with one or more good sureties to be approved by the court or the clerk thereof, conditioned to pay a *pro rata* share of the damages, costs and fees that may be adjudged against the plaintiff at whose suit the property was attached or against the makers of any indemnifying bond, shall be entitled to participate in the distribution of the proceeds of the attached property as provided in the second section of this Act.

SEC. 4. That when actually or constructively served in the original cause the debtor shall take notice of all claims filed as provided in Section 3, and they shall be held to be admitted unless within twenty days after the same be filed the debtor shall contest the same, in which case the issue shall be tried as in other actions at law. Litigation between the debtor and creditor as to the validity of any claim shall not prevent a *pro rata* distribution on the admitted debts, the Court reserving the share of the contested claim until its validity shall be determined.

SEC. 5. That the first attaching creditor shall have the right to sue all the principals and sureties on the bond provided for in Section 3 in one suit.

SEC. 6. That all laws in conflict herewith be repealed, and that this Act take effect from its passage.

Our system of criminal procedure is encumbered by a great number of useless technicalities and is in need of radical reform. Your committee had intended to call the attention of the Association to some of its defects, but ascertaining that the Attorney General, who has had infinitely more experience in the administration of the criminal laws than any member of

the committee, will deliver an address upon the subject, we gladly leave the matter in his hands.

Which report was received and passed for the present.

The Committee on Publication, by its Chairman, J. E. Williams, made a report, which was adopted.

The election of officers for the ensuing year being next in order, was, upon motion, postponed until to-morrow morning.

J. W. House being introduced, read the following paper on "The Law, Its Progress and its Effect Upon Civilization :"

PAPER OF J. W. HOUSE.

The law, in every age, from the darkest period of the world's history to the present time, has made its impress on society either for good or bad. And the nature and character of the laws at different periods and in different countries have varied as much as the people have differed in their manners and customs and in their social and intellectual status.

A good code of laws, rigidly enforced by the legally constituted authorities, will advance the morals, promote the intelligence and inspire confidence in the great body of the people; while a bad code of laws will produce the opposite effect. They will retard civilization, encourage and increase bitterness and strife between individuals, discord and dissatisfaction among classes, and a want of confidence in the government to protect the people in their rights and privileges. In other words, as the laws are made to reach a high standard of perfection, in the same proportion the morals and intelligence of the people will be advanced and developed. We do not mean by this that the law, in every instance, comes in advance of morals and intelligence. But the opposite has been most generally true. In the earlier days the judge, as a rule, came before the law; his pronouncements and decisions were themselves a source of the law; in fact the principal source. But we mean that virtue and intelligence will encourage the enactment of better laws; that law and intelligence advance

together; that the development of the one is the development of the other; that they move hand in hand in the great march of civilization. Macaulay says: "A wise man values political liberty because it secures the persons and the possessions of citizens; because it tends to prevent the extravagance of rulers, and the corruption of judges; because it gives birth to useful sciences and elegant arts; because it excites the industry and increases the comforts of all classes of society." This is true because the law teaches the highest standard of morality; its aim is to reach as near perfection as is within the power of human agency to do; it adopts as its motto the Golden Rule, "Do unto others as you would have them do unto you." It teaches submission to the constituted authorities and the people submit their controversies to her tribunals and yield a ready obedience to her demands.

One of the recognized modes of reasoning, and perhaps the best, is by comparison. We are rich or poor; we are wise, or ignorant; we are happy or unhappy, just as we compare ourselves with others. When we visit the larger cities and view them in all their wealth and splendor we think we are miserably poor. But when we see the beggar on the streets, maimed and crippled, begging for the very means of subsistence, we think we are rich. Hence, in discussing the question we have selected, we shall to some extent compare the intelligence and the laws at different times and ages.

There are those who assume the world is retrograding; that instead of advancing in the scale of morality, in the scale of science and civilization, we are going backwards; that the morals of the people are not so good now as they were at an earlier day; that the people are becoming worse instead of better; that they are growing more ignorant instead of wiser; that the laws are made for the elevation of the wicked and the oppression of the poor; and that the courts are mere machines to be corrupted by money and other wicked influences. You hear these ideas from the hustings, in public assemblies, and, I am sorry to say, you sometimes hear them from numbers of

our own chosen profession, that of the law. But those who assume this are croakers and chronic grumblers. In a more modernized phrase, they are "cranks." Of course we do not use this term in an offensive sense. They are behind the times. They are not abreast with the age.

These ideas are not true. The world is advancing in morals and civilization, and the law is an important factor in this growth and progress. The idea of absolute security in our person and property is a great incentive to a higher scene of duty, to a nobler field of thought and action. This is the grandest, noblest period in the world's history. As the lofty pine with its huge boughs that overlook the surrounding forest in its magnificence and grandeur, so it is with our institutions, our habits, our customs, our laws. When compared with other ages, they sink into obscurity. They are but the shadowy mist of the past, while we stand in the very sunlight of modern civilization with all its blessings and benefits.

It is true that in other ages individual character has stood preeminently high, and in many instances, deservedly so. These individuals have been brought down to us through the pages of history as models of human character, human excellence, and human greatness. And the student of history is too ready to ascribe the achievements of these great men to the age in which they lived. He is too ready to take these men as his standard and compare all other men who lived in the same age with him. Hence, the result will readily be seen; he has an exaggerated idea of the virtue, the intelligence and the laws of people who lived in the darker ages. We read of Archimedes. He was the greatest mathematician of his age; he was able to calculate distances, to construct huge implements of war which astonished the world; he was truly a great man for the age in which he lived. And we read of him now as a man of great wisdom and learning, while in fact we have many school-boys in our public schools to-day who know more of science and mathematics than he ever dreamed of.

We read of the laws of Lycurgus as though they were equal

in wisdom and purity to the laws of the most enlightened and civilized ages, while in fact they were but few and unwritten. No doubt but what they were well adapted to the wants and necessities of the people of the age in which he lived. Yet many of them would be shocking and even revolting to the common modesty and intelligence of an enlightened people. But their chief virtue was in the fact that they served to develop the people in physical courage and strength and to infuse into them a spirit of patriotism and devotion to their country. He gathered up the laws of the Cretans and the Ionians, and then consulted the oracle of Apollo, the god of prophecy and the favorite god among the Athenians and was thereby induced to engraft them upon the institutions of Sparta, thus making many changes in the administration of the affairs of the public. As Plato has said "When the Supreme Maker of the Universe first whirled it into existence and saw it beginning its eternal evolutions, He felt joy in His work because it was well done;" so it was with Lycurgus, when he saw the beauty and grandeur of his political structure, the work of his life, set in motion, he felt joy because he thought it was well done, and that it would be a monument to his name and memory for all time to come.

Under the laws of Draco the penalty for the most frivolous crime was death. The man who had stolen an apple or a peach or a melon, a pig or a puppy, or who was convicted of vagrancy was sentenced to death, no less than the man who was guilty of robbery or treason or murder. He was the arbiter and the judge, and all crimes were punished by him alike. Men were sold into slavery for debt; they were often taken from their homes, their wives and their children and forced to serve a foreign master, and sometimes had to suffer a more ignominious fate, that of seeing their children sold into slavery for the purpose of satisfying the greed and avarice of a ruthless creditor. And we are sorry to say that to-day, in this enlightened age, we have a few men who will tell you that if we had a law to imprison for debt, a law to punish the insolvent

debtor as though he were a criminal, it would encourage industry, make people more honest, and the whole country would "bloom and blossom like a rose." If the days of miracles had not have passed we should not wonder that those who give utterance to these ideas should be bereft of their reason, and that their tongues should cleave to their mouths. But these harsh and inhuman laws continued to be enforced and executed until the days of Solon, the great Athenian lawgiver. He was the grandest man of ancient history; he succeeded in revoking these laws and establishing such as were more liberal; such as brought the entire people more together and nearer upon terms of equality. Notwithstanding the fact that he was one of the noblemen by birth, yet he was a man of pure instincts and noble impulses; a man whose soul went out for those who were oppressed. His chief object in life seemed to be to enact such laws as would elevate the standard of virtue and intelligence; to protect the weak against the strong, and to build up a government whose laws would be renowned for their wisdom, their humanity and liberality. And under these laws, modified and improved as the people became more intelligent, Athens became the central figure of the world. She became the "mother of the arts and sciences, the mistress of eloquence and song." Her public buildings were numerous, costly and splendid; more so than those of any other country. Even the Romans could do nothing more than imitate in this respect. She laid the foundation, the very mud-sills upon which future generations were to build a grand, a glorious superstructure. She sowed the seeds of civilization; coming generations tilled the soil and we are to-day reaping a rich harvest. She had her Themistocles, her Pericles, her Alcibiades and a host of other great patriots and statesmen. But she was not sufficiently powerful to withstand the assaults and attacks of the barbarians, to maintain her laws and institutions and hand them down untarnished to future generations. She has fallen, her public buildings have crumbled and

decayed, her wealth, her institutions are gone, and she is stripped of the monuments of her ancient splendor.

The customs, habits and laws of Rome have perhaps been preserved more accurately than those of any of the other ancient people. While her early history is obscured with a great deal of fiction, yet her laws have been preserved and have entered, in a greater or less degree, into the laws of all civilized countries and the peculiar habits and characteristics of her people have been preserved with a remarkable accuracy. Perhaps we derive more pleasure from the pages of her history than any other. No man's education would be complete without at least some knowledge of Roman character as given through the annals of history. A thorough knowledge of them will have the effect to stimulate one to a higher sense of duty. No one can read of the Roman soldier and statesman without being filled with admiration of his character, and at the same time feel a deeper sense of devotion and patriotism for his country. Her statesmen and philosophers, in many respects, were worthy of imitation and example.

The laws and constitution of Rome for many generations, extending back to the early days of the empire, were compiled by Justinian. They were found in a great state of confusion. No lawyer could hardly tell what the law was. But under his judicious care and administration they were gathered up and compiled into what has ever since been known as the institutes of Justinian. Under these laws as they had existed for many generations, Rome reached a high standard of perfection for the age and time in which she had her being. She had her eminent statesmen, her profound philosophers; she had her magnificent walls; her splendid temples, her steeples and her spires. She commanded the admiration, the respect and even obedience of the world. But she, too, has fallen and to-day she is only known in name, fame and history. Her dominions and possessions were not limited by her laws. These were only limited and circumscribed by the power and ambition of her leaders. When Alexander, in a fit of passion, had stabbed and

killed Clitus with his spear and realizing at once the enormity of the deed, became almost senseless with grief, when one of his attendants said to him: "Is this Alexander whom the world looks to, lying here weeping like a slave for fear of the censure and reproach of men to whom he himself ought to be a law and measure of equity, if he would use the right his conquests have given him as supreme Lord and Governor of all?" So it was with Cæsar and Pompey, and Crassus and others. They were a law unto themselves. They were preeminently a war-like people. The nature of their government and the age in which they lived required them to be soldiers. It was a question of physical force and courage with them. With the conquest of Asia came luxury and avarice against which Livy and Cato proclaimed the loudest and appealed to them to return to the days of their purity. These did not bring with them civilization and refinement; these did not develop the arts and sciences; these did not educate the masses and prepare them for self government. But under these influences her people became corrupted; they were wanting in proper moral and intellectual training. Her women ceased to blush for vices which in other ages would have rendered them infamous. She sacrificed thousands of gladiators without concern; she developed the muscle and not the brain of the great body of her people. Hence, her fall and ruin.

But we are glad there was a Rome; we are glad there was a Greece; we are glad of the achievements of her great men. Blot out the past of any one great nation and our destiny would have been changed. Italy and Spain, in the persons of Columbus and Isabella aided in the great discovery which opened America to immigration and commerce; which led to the development of her rich minerals, her vast prairies, her beautiful plains and fertile valleys.

Blot out, if possible, Palestine from the annals of the past, and we would be without a Christ, without a religion. We are, in a measure, indebted to Rome for our jurisprudence, and to Greece for our arts and sciences. Annihilate the achieve-

ments of the great men of these two nations, and we would be wanting in the superior excellence which we enjoy to-day. The great principles of civil government were, perhaps, first conceived in the minds of these great men, and they have been handed down from age to age, from generation to generation, being developed and improved as the people advance in intelligence and as their wants and necessities required.

Coming on to a later period, even down to the sixteenth century, when England, perhaps, enjoyed the highest state of civilization of any country in the world, her laws had made the nearest approach to perfection; she was formidable in her army, exuberant in her wealth and her resources, and eminent in her statesmen. But then she was nothing to compare with what she is now in point of civilization, her laws, and the administration of her public affairs. Her security, her protection, was in a measure at the mercy and in the hands of the army. Up to, and even including, the reign of James II. it was a question of church polity, upheld and sustained by the common soldiery, rather than a question of law and civil government, to be administered according to the will and wish of her people.

But in accordance with the decrees of the Eternal Being the evil star was to linger no longer; the political horizon was lit up with the flaming eloquence and burning pathos of her patriot statesmen; her people had imbibed something of the spirit of civil government, a spirit of personal freedom and personal liberty. She had her Halifax, her Hampden, her Eliot, her Pym, her Coke, her Littleton and her Wentworth in the great struggle for civil and religious liberty, and when James II. began to usurp the legitimate powers of the government and set at naught her laws and constitution; when he removed honest and competent judges from the bench and placed in their stead unscrupulous men to carry out his wishes and nefarious purposes; when he prorogued Parliament because it would not do his bidding; and finally when he ignored the "Petition of Right," the great charter of their civil liberties,

the people rose as a man and forced him to abandon the throne and spend the remainder of his life in exile. And upon certain conditions which were set forth in the Bill of Rights, William, Prince of Orange, succeeded to the throne. Among the most notable of these conditions were, "The King cannot suspend a law, nor withhold its execution; he cannot levy money without the consent of parliament; the subjects have a right to petition the King; there shall be no standing army without the consent of Parliament; elections and parliamentary debates must be free." Thus the strong arm of the law was made superior to the will of the King. The civil law was paramount to the military, and the freedom of thought and liberty of speech was granted to the people. Happy, thrice happy, was that day, not only for England, but for all future generations. From that time the Promethean spark was fanned into a blaze, and has continued to burn bringing forth new luster in each succeeding generation. As the thread of Ariadne, served to conduct Theseus through the deep, dark windings of the labyrinth unharmed and unhurt, so the English people in this eventful struggle were conducted out of the region of darkness into a pure open atmosphere, and she has continued to grow and increase in wealth and power and influence. She is a great country. Her moral and intellectual forces are felt and appreciated in every civilized country. From her we have, in a measure, gotten the rules for our guidance in matters of civil conduct; from her we have inherited many ideas of civil government; from her we received the idea of a representative government, the very *basis* of our free institutions.

Again, in France, even within the nineteenth century, when she had reached the acme of her glory as a military power under the leadership of the Emperor Napoleon, who led her armies to victory, her flag was honored and respected in every country and every clime. She was the great central idea of every nation and country. Yet, with her it was not a question of arts and sciences; it was not a question as to the advancement of her civilization; it was not a question of personal

freedom and personal liberty ; it was not a question of law and order ; but it was a question of force and power ; a question of absolute dictation ; a struggle for supremacy ; a struggle for imperialism which met its just reward at the battle of Waterloo.

But how is it to-day ? We repeat that we live in the grandest, noblest age of the world's history. We live in an age of excitement, activity and progression ; an age fraught with results and consequences which will ever be preserved with a marked distinction upon the pages of history ; an age in which the hand of progress is written upon every wall ; an age in which the laws, protecting the rights of the citizens in person and property, has permeated every civilized country. And in this march of progress no country has advanced more rapidly than our own. The Constitution, framed by our revolutionary patriots and statesmen, is broad enough for the highest civilization. Under it the judicial, the legislative and the executive departments of the government are so evenly balanced that the one cannot infringe upon the powers of the other without marring the beauty of the entire machinery. Under this laws have been enacted to meet every demand, social, moral, intellectual and political. Within the last century our population has increased to more than fifty millions of people ; coming from every nation and country ; our commerce is almost without limit ; we have railroads like net-work from one end of the continent to the other ; and our people are educated up to a standard which enables them to be capable of self-government. Our laws are sufficient to protect every citizen in his person and property from the highest to the lowest. They are such as will develop the genius and the intellect of the youths of the country ; that will enable them to rise from the most humble and obscure cabins of the country to the highest positions of honor and trust, if they only have the energy, the ambition and the intelligence to entitle them to it.

Now we do not mean that our laws and our civilization have reached perfection. By no means. We are human and

our laws are human. Hence they are necessarily defective. All that we can do or hope to do is to reach as near perfection as we can, and there is a broad, unexplored field before us yet. In this effort, however, there is a great responsibility on the lawyers as there has always been in every age. Whatever may be said of the lawyers as a class, they have perhaps done as much, if not more than any other class to ameliorate the condition of mankind. The idea that they are made up of a set of tricksters and men who have it in their hearts to do anything to advance their own selfish ends is not true. They occupy a position of trust and confidence, and while some violate that confidence and bring odium on the profession, yet you will always find those who have engaged in the profession in good faith; who are lawyers for the sake of the law, struggling to advance the interests of the public. In the great questions which have agitated the public mind in all ages they have been foremost in the advocacy of the right to prevail against the wrong; in behalf of the oppressed against the oppressor. I have had occasion often to remark, and it is true, that in all my experience and observation among lawyers when questions of public policy are discussed either privately or publicly, they do not hesitate to espouse the cause of the weak against the strong; the cause that will result in the greatest good to the greatest number. Only a few days ago I was impressed with a remark made by a gentleman of this city who is not a lawyer, but has a large experience and well defined ideas on all the great questions of the day. He said that in his observation he had always noticed that the lawyers as a class were the most conservative; that in the State Assemblies as well as in the Halls of Congress, the lawyers were the real conservative element, and prevented extreme and unjust legislation. There is nothing truer than this. The lawyer in a very short time learns that it is not only possible for him to err, but it is quite probable; hence he acts with more prudence and caution upon all questions. The distinguished divine, the Rev. Mr. Talmage, is reported to have said that if he were

going to be tried for his life he would rather be tried by a jury of lawyers than preachers. This was doubtless said, if said at all, not because he had more confidence in the integrity of lawyers than preachers, but, owing to their education and training they were more liberal and conservative. As an evidence of the lawyers' good faith and fidelity to the more unfortunate classes, you will find them as a rule favoring a usury and a liberal exemption law, while on the other hand you will find the money-lenders and a great many others advocating their repeal. Some time ago I remember to have read an extract from a speech of a distinguished citizen of Kentucky. He said in substance—I can't give the exact language—"When the Supreme Maker of the Universe first conceived the thought of man's creation He called around him the Three Graces that constantly wait upon His throne, Truth, Justice and Mercy, and enquired if man should be made. To which Truth responded, 'Nay, Lord, make him not. He will trample upon thy laws and disregard thy commands.' Justice responded, 'Nay, Lord, make him not. He will disregard thy precepts and trample upon thy foot-stool.' But Mercy, humbly bending before the Divine Majesty, exclaimed, 'Yea, Lord, make him. I will look after him. I will protect him. I will attend him through the dark meandering scenes of life.' Hence, man was made with the Divine injunction, 'Go ; thou art a child of mercy.'" How true has she been to her promise, not only as we see it in our every day life, but even in the enactment and execution of the laws. No man can be convicted of a criminal charge so long as there is a reasonable doubt as to his guilt. The usury and exemption laws and other laws of a similar character are but the tender mercies that enter into the mind and soul of the legislator directing him to act in behalf of the weak and oppressed. They are the evidences of the purest elements and noblest impulses which belong to human character.

Then let the hand be stayed that would repeal these laws, or annul the constitutional provisions embracing the same.

But rather that others of like effect should be enacted. And in the language of the immortal Webster, "Whosoever labors on this edifice with usefulness and distinction; whosoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher into the skies, connects himself in name and fame and character with that which is and must be as durable as the frame of human society."

Upon motion the paper of Mr. House was ordered to be printed with the proceedings.

H. G. Bunn was next introduced and read the following paper on: "Some Defects of our State Judiciary System:"

PAPER OF H. G. BUNN.

As to the mere forms and regulations of procedure, known and treated usually under the head of "Pleading and Practice" nothing can appropriately be said in a paper such as this is designed to be. Systems of judicial procedure are best built up by slow degrees, and consequently are the fit subjects of gradual changes and alterations.

What, therefore, shall here be said, will be altogether in regard to the organization of our State Courts, and mainly the Circuit Courts; which, by our Constitution, are made to possess the residuum of all original jurisdiction—jurisdiction not otherwise expressly conferred, and to which, as a consequence, the country must look for most of the blessings of a sound, vigorous and fearlessly independent administration of the laws, and from which we have most to fear, of all other Courts, when their administration of the laws shall assume an opposite character or even an opposite tendency.

It is conceded in the outset that, as all systems of judicature are the subjects of almost certain abuse in the course of time, so any one which may now be advocated or adopted as a reformation or improvement may in turn be the subject,

sooner or later, of as sharp criticism as that we now practice and call in question.

However, what shall here be said is not promised as something new. On the contrary, under the circumstances, it can be little more than a reiteration of the teachings and warnings of that intelligent, patriotic and ever watchful minority, whose voice from the earliest ages of constitutional government has been most highly respected, and yet, strange to say, as systematically unheeded in practice, and as gladly hushed by the din and noise of an unreasoning clamour for Utopian ideals.

The first plan we adopted for selecting our Circuit Judges—electing by the Legislature—is probably the most objectionable of all that could be devised by a sane people. That method, as might have been seen, had all the vices of an elective system without a single one of its virtues. It had all the anti-democratic look about it of an appointive system, without possessing one spark of its dignity, one touch of its vigor or anything like its intelligence. The fruitful parent of disgusting log-rolling, it was, nevertheless, possessed of a full tendency towards a condition of irresponsibility to the public, looking only to the members of the Legislature for renewal of favors at the end of every four years.

The system had no friends from the first. The politician on the one hand found it a convenient text from which to harangue the masses, while the citizen of intelligence, moving in the private business walks of life, having no other desire than to compass the public good, looked upon it as one tending toward a fostering of the bad and an ostracism of the good.

It is not at all strange that it was abolished in even so short a time as twelve years. Here, however, occurred one of those strange freaks that sometimes mark the conduct and career of the wisest people. I refer to the natural disposition of a people to look upon nothing as a correction of abuses in one direction, except it be in the shape of as great an evil in the

opposite direction. Thus the people disquieted with the conduct, and distrustful of the integrity of their legislators, and doubtless, having their disgust and distrust exaggerated by the very liberal word-painting of their very dear friends, the demagogues, rushed from that patent evil to another: they know not of in the shape of a popular election with a four-years' tenure.

A twelve-years period under the election system discovered the aspirants for judicial honors imbued with an itching for the excitement of the hustings, but the political party as then organized, educated in the old school, which looked with as much horror upon the connection of the judiciary with and its dependence upon the political machinery of government as it did upon the union of church and State, stood aloof and refused these aspirants places upon the partizan chessboard. They made speeches and canvasses, but of the very reserved and bashful sort.

Then comes the period of blood and its consequences, sandwiched by a period of uncertainty and doubt—a period given over to the reign of passion, crimination and recrimination—a period that might as well be written down as a time of judicial drouth, from out of which nothing sprang which we would desire, or be permitted, in these piping times of peace and good will, to make use of to point a moral or adorn a tale. Moreover, just twelve years ago, we took a leap backward over that tragic period, re-enacted "Gould's Digest," and thus by common consent left a blank in our judicial chronology—a page most happily inscribed and dedicated to the re-establishment of "fraternal relations" as our learned brethren the ecclesiastics would say.

Under the present constitution we started afresh with the elective system. Political parties took charge of the work of selecting judges, while the aspirants themselves for years showed a disposition to go no further into the field of parti-

sanship than they were driven by outside pressure and an unwillingness to seem odd.

The present finds it the case in some circuits at least, that the feeble effort to avoid the inevitable has ceased altogether, and a judge is now made in the same way that a legislator or a sheriff is made.

But a few years ago the whole State was in a ferment over the problem how to hurry up the Circuit Courts in order that their dockets might be cleared in the time allowed them, and the expenses curtailed.

Our Legislature enacted laws having for their object the expediting of business in the courts. The people clamored for more active and industrious judges.

The new judges responded with alacrity, only to find that when they had gotten rid of the old rubbish the civil dockets never more amounted to enough to call for expeditious work.

The criminal dockets continue about the same in regard to number of cases.

The litigation growing out of our growing commercial relations with the people of other States nearly all seeks another jurisdiction, and our Circuit Courts have ceased to be what they were.

The wholesome dread of the law and its surroundings has assumed more of an air of submission to persecution. The stern dignity that of itself, in the olden time, had much to do in engendering a feeling of reverential awe for the courts, has given place to an amiability of manner which no man can fail to cultivate who becomes devoted at the shrine of popular favor.

The great mistake we have made and are still making is in attempting to regulate the judicial by the same rule by which we conduct the political department of the State government. Because it is considered one of the chief blessings of our system of government, that our legislators electioneer, make speeches and flatter their constituents, it is also considered right and proper that our judges do the same things if they

would enjoy the favor of their countrymen. [There is in fact, no points of likeness between the two, and consequently they are not to be made subject to the same rule.]

The aspirant for political office is in some sense the public educator. He may be a humbug, an arrant demagogue, but he is an educator still. Without his teachings, good or bad, a large class would be totally uninformed on subjects of political interest. Without his active participation in affairs, for selfish ends though it be, the masses would soon lose all interest in the operations of government, sink into a state of apathy and indifference and become the sure victims of every species of unholy ambition and greed. He pleads for or against measures only, and mostly for measures unknown and untried. His is therefore an agency too dangerous in its possible workings to admit of his official independence of his principal. He must express the will of the people, otherwise he plays the part of a traitor and tyrant.

On the other hand, the cardinal virtue of the judge is impartiality, and his chief armament silence before judgment. He is not a teacher of political science, but an administrator of the law as he finds it. He is not an advocate or denouncer of measures, but applies the law, be it popular or unpopular.

If he speaks in praise of himself he is an egotist—a boaster. If he speaks of his official functions and how they are to be exercised, he but shows himself ready to spring a mine that would shatter all government to pieces.

He is, therefore, by all the rules of propriety forbidden to assume the politician's privilege—to take upon himself the politician's duty, and yet the tendency of the present system is to force him into this new role.

The pride of championship of the theory of universal popular election has produced in our brains the strange notion that all the affairs of life must be managed according to the rules in vogue in the political arena.

In magnifying our character as the personification of

popular sovereignty we heedlessly mix things congruous with things incongruous, trusting to American luck or blind chance to ward off the consequences.

To my mind, however, the manner of selecting Circuit Judges is not the greatest danger to that office and to the people. It really makes not the greatest difference what is the method of selection, so that, whatever it be, it be hedged about to invite the good and honorable and restrain the bad and unscrupulous.

The crying shame of our system is, after all, the shortness of the terms of the judicial office.

Take a man of legal learning and a mature mind, (and such ought to be our judges), place him on the bench, say, at the age of forty. He has a family, perhaps, (for the bench is not reserved for bachelors). The moment of his devotion is the moment also when he must take leave of a business it has taken him all his manhood's days to build up. His salary is fixed at an amount to supply him and his family with the necessities and maybe some of the comforts and luxuries of life.

It is not expected that any of it will remain after the expiration of his term. Indeed if such a suspicion lurked in the brain of a large class, it would be cut down to prevent the overplus. He looks forward to the time when he will be forty-four years old and when he must either retain his office or renew life's struggle as a private man.

The weight of increasing years and of increasing cares, will at the end of his term begin to bear more heavily upon him. His body is no longer lithe and active, his step is no longer elastic as in his early manhood, and his mind and heart have long since lost the buoyancy and hope of youth.

Observation on the career of others teaches him that he must prove an exception if, as a private man, he shall not

move on the downward grade of life, as well as be lost to public view.

The alternative is to seek to hold on to the office. A government that presents such a temptation to its judicial officers is unwise in theory and suicidal in practice.

This much in behalf of those who are to hold the scales of justice in our midst. In behalf of the worth and intelligence of the land—in behalf of him who has nothing wherewithal to aid in lifting some friendly form to the position of arbiter of his and other men's rights—in behalf of the great mass of the people unknown to the government except by their single votes and their taxes, there is much more to be said in advocacy of a fearlessly free, untrammelled and independent judiciary.

There never was a more dependent class of officials in any free government than are our Circuit Judges. Deriving their official existence from a source naturally unfriendly to that high and unyielding trait that distinguishes the judicial mind, clothed with the judicial ermine, which, peradventure, must be laid aside at the end of so brief a period, nothing but the personal character of the individual is left to struggle against the whole tendency of the system to belittle and undignify the office.

Added to these difficulties, the same disposition in the public exhibits itself through the workings of the legislative department in continuous and uniform efforts to hedge the judges about with restrictions, the best calculated to destroy as far as possible, all their personalty as administrators of the law. There is much connected with the office of a *Nisi Prius* Judge which demands much more of personal snap and positive rule than is exhibited in most circuits.

Take these characteristics away entirely, as the tendency is, by rendering the incumbency of the office, to the last degree, impersonal, and there is an element in all parts of the country

that will not fail to take advantage of it, and impress *its* character upon the manners and operations of the courts.

Growing out of organic defects, though not strictly of them, there are half systematic, half routine defects connected with our Circuit Courts that demand the serious attention, not only of constitution makers, but of legislators. With the exception of the five or six counties containing the larger towns and cities, there is scarcely a county in the State, so far as my knowledge extends, whose business would or ought to occupy an energetic court more than ten or twelve days in a term.

There are whole circuits wherein the courts do not sit exceeding fifteen or twenty weeks in the year. It would seem that our plan has been, and is still, to make as many judges as possible, and these as shortlived as possible, so that they will never become puffed up with either the length or magnitude of their authority. And to make things even all around, to reduce the salaries of the many so that the year's outlay will not be more but much less than the aggregate of what should be the salaries of the few to whom ought to be committed the whole business of our Circuit Courts throughout the State.

The subject is incapable of literary ornamentation, and yet it is full of suggestions. It is an unpopular subject in some of its aspects, and therefore is not likely at first to receive the open support of the many. Like all reformations of abuses, the advocacy of any radical change in our judicial system must presuppose inefficiency in some quarters, and therefore, it is apt to be misconstrued and opposed, not on the real merits of the question, but in view of the supposed prejudices of the people in favor of the existing system.

The Executive Committee, by its Chairman, S. R. Cockrill,

proposed the following names for membership, all of whom were received :

J. W. Crawford,	A. F. Mayberry.
J. B. McDonough.	N. W. Norton.
T. M. Gibson.	M. M. Stuckey.
W. E. Hemmingway.	A. G. Washburn.
J. A. Watkins.	

Recess until 2:30 o'clock p. m.

AFTERNOON SESSION.

The Association met pursuant to adjournment.

The Committee on Law and Law Reform, by its Chairman, U. M. Rose, made report as follows :

Mr. Chairman :

The Committee on Law and Law Reform will only mention such defects in our laws as have occurred to them in their reading and practice. It is not their intention to go into the region of speculative and experimental legislation, but only to direct the attention to such obvious defects as can excite but little controversy. For a long period of time law reform made but little progress, and indeed it could make but little as long as the common law was believed to be the perfection of human reason, and that all laws derogatory to it should be regarded unfavorable. The law can never be the perfection of human reason until it embodies the last and best results of human experience. We may congratulate ourselves on the immense progress that has been made in this direction, wherever the English language is spoken, within the last thirty years. It is gratifying for us to be able to say that a review of the past transactions of the Association will show that it has never recommended the passage of any Act the tendency of which would not be to lessen either the number of suits or the expense of litigation. It is a great mistake to suppose that any lawyer with a proper sense of the duties of

his calling can desire anything that will increase, prolong or intensify any kind of strife in the community in which he lives. Acting upon this belief, we venture to suggest some statutory changes which, if carried out, will, we think, tend to lessen the number of suits, to make the administration of justice less expensive, and thereby to improve the body of the laws of our State.

ACKNOWLEDGMENTS OF DEEDS OF CONVEYANCES.

The American Bar Association, with a view to procure uniformity in the acknowledgment of conveyances, have brought forward a form for a statute which is recommended for adoption in all of the States. This form is herewith reported. It substitutes a simple acknowledgment of all conveyance by private persons in one common form, which may be used whether the grantor is married or single, instead of our present cumbersome forms, which have in times past led to much litigation which has generally been unjust and oppressive, and which has made it necessary from time to time to pass curative Acts. We freely recommend the proposed legislation as being in the true line of wise and prudent law reform.

DIVORCES.

The American Bar Association have also recommended the passage of a uniform statute on the subject of divorces, which is herewith reported. We cannot, however, recommend it, as, if it is enacted, a man may so conduct himself as to furnish his wife good ground for divorce, and then by leaving the State prevent personal service on himself, and so, after a year, prevent his injured wife from getting a divorce. This, we think, is not desirable. Arkansas has never been in the list of States to which residents of other States have resorted for the purpose of getting fraudulent decrees of divorce, and we think that our statutes on that head are sufficiently conservative as they stand.

INJUNCTION BONDS.

Generally in bonds given in the prosecution of suits, a final judgment is rendered against the surety in the bond at the same time that a judgment is rendered against the principal. But in the case of injunction bonds a separate suit is required. This is a case where one suit should result in closing the whole controversy.

DAMAGES ON APPEALS.

Our Constitution provides for the free and unbought administration of justice, yet our statute provides that in every case in which the party loses his suit on appeal to the Supreme Court he shall pay 10 per cent. damages on the judgment appealed from, which has been superseded. There are many cases where the party very properly appeals, though the court may hold that the law is against him on the final consideration of the appeal; but by our law as it stands at present no distinction is made between the most frivolous and the most meritorious appeal. It is extremely probable that the legislature only intended to make this statute apply to delay cases, but as it appears on the statute book the courts have not been able to so hold.

SUNDAY LAWS.

Our statute as it stands in Mansfield's Digest provides that—
“Persons who are members of any religious society who observe as Sabbath any other day of the week than the Christian Sabbath, or Sunday, shall not be subject to the penalties of this Act (the Sunday law), so that they observe one day in seven, agreeably to the faith and practice of their church or society.”—Mans. Dig., Sec. 1886.

This statute had been in force from the time of the organization of the State Government; but it was unfortunately repealed by the Act of March 3, 1885.—Acts 1885, p. 37.

While the Jews adhere, of course, to the letter of the original command to remember the seventh day of the week, there is also in the State a small but respectable body of

Christians who consistently believe that the seventh day is the proper day to be kept sacred; and in the case of *Scoles v. State*, our Supreme Court was compelled to affirm a judgment against a member of one of these churches for worshipping God according to the dictates of his own conscience, supported as he supposed by good theological arguments. It is very evident that the system now in force, savoring as it does very much of religious persecution, is a relic of the middle ages, when it was thought that men could be made orthodox by act of Parliament. Even in Massachusetts, where Sabbatarian laws have always been enforced with unusual vigor, exceptions are made in favor of persons who religiously observe any other day in place of Sunday. We think that the law as it stood in Mansfield's Digest should be restored, with such an amendment as would prevent the sale of spirits on Sunday, as that was probably the object of repealing the above section.

CHARGING TWO OFFENSES IN ONE INDICTMENT.

The provision of the code that prevents the charging of more than one offense in the same indictment is an unfortunate departure from the common law rule, by which two or more offenses of the same kind might be joined. The present method only leads to greater trouble and expense, and has nothing to recommend it. We think that the common law rule should be restored.

PROOF OF INSOLVENCY.

Generally insolvency may be proved like any other fact. But owing to the peculiar method in which chancery jurisdiction took its rise, it was held that in a suit in chancery to set aside a fraudulent conveyance, or to obtain an equitable garnishment, it was necessary first to bring a suit at law and to obtain final judgment and execution and return of no property by way of proving insolvency before filing the bill; and so the law remains in this State. Thus we have two suits in this class of cases where there ought to be but one. This fact tends not only to useless delay and expense, but it gives to the fraudu-

lent debtor time within which to make his fraudulent plans successful.

LEVY ON MORTGAGED PERSONAL PROPERTY.

It has been held by our Supreme Court that an execution cannot be levied on personal property that is under mortgage, but that in such cases the creditor is forced to the expense and delay of a suit in chancery. This evidently ought to be remedied by statute.

RECOVERY OF RENTS IN UNLAWFUL DETAINER.

Though back rents may be recovered in ejectment, yet in the action of unlawful detainer, owing to a defect in the statute, after obtaining judgment for the land, the plaintiff must bring another suit to recover back rents due for its use. *Poe v. Bradley*, 34 Ark., 500. It is clear that the law ought to be different, and that one suit alone should be required.

There should also be a provision in the Act for judgment against defendant for rents accruing after suit was brought where no bond is given.

TRANSFER OF CAUSES.

By the code, the fact that a suit has been brought on the wrong side of the docket is no ground for dismissal; but only for transferring the cause to the proper docket. This is a very valuable provision, as it promotes a speedy administration of justice; but by an oversight it does not apply to a suit brought in a separate Court of Chancery. As we have now several separate Courts of Chancery, and may have more, this defect in the law should be corrected.

SELLING LIQUOR TO MINORS.

By an oversight the statute on this subject does not apply to cases where a party lets a minor have liquor in exchange for any article of property instead of money. This should be corrected. Also there should, we think, be a law making it a penalty for liquor sellers to *give* spirits to minors.° And to

include selling or giving away cigarettes to school children under the age of fifteen years.

CURTESY IN LANDS.

By our law if a man marries a widow who has children and then a child or children are born to him by her, and she afterwards dies, he is entitled to have the use of her lands for life, though he may turn the children of his wife's first marriage out of doors in absolute want. This obvious evil has been remedied in at least one of our States by a statute providing that in case a wife have a child or children living by her first husband her second husband shall only have a right to one half of her lands by curtesy, the other half going to her children by her first husband. If our estate by the curtesy is to continue at all, it should, we think, be modified in this way; but we see no reason for continuing the law of curtesy any longer, it having been based on feudal reasons that have long been obsolete; and we think that the estate itself should be abolished; in which event the rents of the land would go directly to the children of the deceased wife for their education and nourishment, the best application that could be made of them. If the estate, however, is to be continued at all, we think that it should either be confined to cases where the wife dies leaving no children, or that in any case the curtesy should not exceed in amount the corresponding dower interest of the wife in his lands.

ATTACHMENTS.

An attachment is a severe remedy, and should not be resorted to except in cases where there is a strong presumption of the fact upon which it is based. On the other hand where the writ is sued out without proper cause, and the attachment is dissolved because made on an untrue affidavit, the defendant should be allowed a sum sufficient to compensate him for the injustice done to him. At present it cannot be said that our law in that case gives any satisfaction as a general rule for the wrong sustained, the defendant not being

allowed in any case a judgment even for the money he has been forced to pay an attorney to defend the unjust and oppressive suit. In a good many of the States the aggrieved defendant who succeeds is allowed to recover his attorney's fees as damages by reason of the illegal issue of the writ. We think that the law should be the same in this State, and that defendant should be entitled to recover all other reasonable expenses, and damages to his credit, business and reputation.

PRIVATE SEALS.

For very many years no greater absurdity in the law has existed than that relating to private seals to written instruments. By that law a mere flourish at the end of a signature to a written instrument gives it a very different character from what it would have had without it, so that it is governed by a wholly different code of laws. Private seals have ceased to be used, and as a wholly unmeaning creation of legal technicality they should be abolished.

LIMITATION OF MORTGAGES.

By our law, as it now stands, the owner of the fee simple title to land is barred of his remedy by the holding of seven years; but a mortgagee is not barred by a holding for any length of time, unless shown to be entirely adverse. In this respect the conditional estate occupies a much higher position than one that is absolute. This, so far as we know, is universally considered to be wrong. There ought to be a statute putting the remedies to enforce mortgages on the same level with regard to the statute of limitations with larger estates. At the same time there ought to be some way of continuing the lien of the mortgage by proper notice to all the world. Provisions of this kind are inserted in the statutes of most of the States. These vary in some particulars, but the object in all is the same. As good and as simple a plan as any that we have seen is that adopted in Louisiana, where the lien of the mortgage may be continued by a memorandum to be made on the margin of the record of the mortgage by the mortgagor,

within the statutory period, stating that the lien is revived from date of the memorandum, the same being dated and attested by the recorder. Such a law would have the effect to facilitate the examination of titles, and would prevent innocent persons from being imposed on by stale mortgage liens.

INDICTMENTS.

In criminal proceedings it often happens that expense and trouble are incurred in the prosecution of a criminal, and that in the end he is not tried at all, or, if tried, he had as well not be, since he is turned loose on some bare technicality in no wise affecting the merits of his case.

To avoid such a result it is now provided by statute in England and by those of several of the States that where the indictment is defective in form merely it may be amended by the officer prosecuting for the government, with provision, that where the amendment is such as to operate as a surprise to the defendant, the Court shall grant him a continuance of his case. This legislation should commend itself to every person who desires a direct and fair administration of the criminal laws.

BOGUS INSURANCE COMPANIES.

A favorite way of swindling of late years has been by organizing life and fire insurance companies without any capital, except such as is invested in lying advertisements whereby the unsuspecting and the unwary are entrapped to their misfortune. As the losses thus sustained generally fall on people who are struggling with embarrassment or adversity, and who are anxious to secure some kind of protection for themselves or their families against apprehended calamities, and frequently on the widow and the orphan, the plans of the reprobates who engage in these schemes possess a peculiar element of heartless wickedness that deserves special condemnation. In most of the States these criminal practices have been repressed by stringent legislation; but up to the present time our State has offered an inviting field to this class of imposters and they have not failed to avail themselves of it accordingly. We

ought to have such legislation as would not suffer them to carry on their fraudulent pursuits with impunity. These practices ought to be made an indictable offense, and should be met by other appropriate legislation.

EMBEZZLEMENT.

One of the most frequent crimes of modern times is embezzlement; and it is one that should be repressed certainly with as much rigor as the crime of larceny, which is a milder offense, since every embezzlement involves not only the act of stealing, but also a breach of trust and confidence. Yet under the present state of our law, where money is the subject of the embezzlement, as it most commonly is, a conviction can rarely ensue; because the pieces of money or the bills appropriated must each be specifically described in the indictment; and as the confidential clerk in a mercantile house or the teller of a bank, who stealthily abstracts the money of his employer, very seldom leaves in its place any accurate and detailed description of each piece of money taken, and the description is usually unknown to the employer, it commonly follows that crimes of this sort are committed with absolute impunity. This absurdity grows out of the fact that in Arkansas we have the same law that was the law in England many years ago. The defect was cured in that country by the Act of 7 and 8, George IV., which provides that in an indictment for embezzlement "it shall be sufficient to allege the embezzlement to be money, without specifying any coin or valuable security;" and like statutes have been passed generally throughout the States. The attention of the legislature was called to this defect in our statutes by our Supreme Court in delivering the opinion in the case of *State v. Thompson*, 42 Ark., 517.

LARCENY.

A similar law ought also to be passed in regard to indictments for larceny of money.

MORTGAGES ON CROPS.

The law permitting the mortgage of crops should be lim-

ited to the case of the crops of the current year, and not later, and not to be executed earlier than the first of January of the year.

HOMESTEAD LAWS.

By methods of obscure advertisement debtors are sometimes deprived of the opportunity of claiming their homesteads until it is too late. This defect in the statute should be remedied by appropriate legislation.

APPEAL BONDS.

Our statute on the subject of appeal bonds, Mansfield's Digest, Sec. 1295, is very defective, since it makes no provision requiring the appellant to prosecute his appeal without delay. Under this statute it frequently happens that the appellant takes an appeal to the Supreme Court, and then dismisses it, or suffers it to be dismissed, with impunity. It should be amended by adding the words, "he will prosecute his appeal to judgment without delay" immediately after the words, "also that," and by adding the words, "in case said judgment should be affirmed" to the words, "or the appeal dismissed."

Respectfully,

U. M. ROSE, *Chairman.*

S. W. WILLIAMS.

B. B. BATTLE.

AN ACT RELATING TO ACKNOWLEDGMENTS OF INSTRUMENTS AFFECTING REAL ESTATE.

SECTION 1. The following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments.

(Begin in all cases by a caption specifying the State and place where the acknowledgment is taken.)

I. IN THE CASE OF NATURAL PERSONS ACTING IN THEIR OWN RIGHT.

On this....day of.....18...., before me personally appeared A. B. (or A. B. and C. D.), to me known to be the person (or persons) described in, and who executed, the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

2. IN THE CASE OF NATURAL PERSONS ACTING BY ATTORNEY.

On this....day of.....18...., before me personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same, as the free act and deed of the said C. D.

3. IN THE CASE OF CORPORATIONS OR JOINT STOCK ASSOCIATIONS.

On this.....day of....., 18.., before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation, (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its Board of Directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

In case the corporation or association has no corporate seal, omit the words, "the seal affixed to said instrument is the corporate seal of said corporation (or association) and that," and add, at the end of the affidavit clause, the words, "and that said corporation (or association) has no corporate seal."

(In all cases add signature and title of the officer taking the acknowledgment.)

SEC. 2. When a married woman unites with her husband

in the execution of any such instrument, and acknowledges the same in one of the forms above sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination of a married woman in respect to the execution of any release or dower, or other instrument affecting real estate, shall be required.

Upon motion the reports of the Committee on Judicial Administration and on Law and Law Reform were ordered printed, and made special order for Thursday morning.

The following resolution was introduced by M. M. Cohn:

Resolved: That this Association recommend the adoption of a constitutional amendment, providing: That in all cases which may be tried before a jury in the Circuit Courts, or in the Chancery Courts, it shall be the duty of the Judge to instruct the jury as to the law, and he may, likewise, comment upon the testimony, but his views shall not be binding upon the jury, and hereafter no written instructions by counsel in a cause shall be read to the jury, and if the Judge shall be satisfied in jury cases that the testimony and law of a cause does not justify a verdict in favor of one or the other party to a controversy, he shall have the power to order a verdict to correspond with his own views or a nonsuit, as the case may require.

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M. M. Cohn, being introduced, read a paper on "Reforms in Railroad Law."

John B. Jones read the following paper on "Tax Titles of Arkansas."

PAPER OF JOHN B. JONES.

In the discussion of this subject I shall deal with tax titles as rules of property, and as such with their effect on the general prosperity of the State as well as the laws on which they are based.

The importance of the stability of laws forming rules of property cannot be overestimated.

If all the titles to property within the borders of a State were unsettled and in dispute there could be no improvement, no progress in that State.

A country will progress in proportion to the stability of its laws governing titles to property, and it matters not what its resources are, if people are not assured the law will protect them in possession of property there will be no permanent improvement.

The right to acquire and enjoy private property has, in all ages, exercised such control over the organization and welfare of society, that it may be well first to refer briefly to its origin and history.

Blackstone said: "Man in his primeval state occupied the earth in common. No man," he said, "would then take the trouble to provide a habitation for shelter and safety; nor raiment for comfort and decency. For if he walked out of his tent or pulled off his garment the first stranger who came along might occupy the one and wear the other. Nor would he till the soil, for another might watch his opportunity and seize upon and enjoy the fruits of his labor. Hence, had not separate property been vested in individuals," he said, "the world would have remained a forest and men have been mere beasts of prey. Necessity then," he said, "begat property, and in order to secure that property resort was had to civil society."

Throughout Europe during the middle ages the form of government was based directly upon the tenure by which lands were held. Under that system there was no private property in lands; the title was in the king.

Civilization in that dark period of its history sunk so low that people, for protection, arrayed themselves under the banners of great chiefs or lords who held the lands of the king, and whom the people bound themselves to serve in wars for

use of lands, and in turn the lords bound themselves to protect their tenants.

The protection afforded was not the protection of law, but protection by force. And in that country, where centuries before, Roman jurisprudence had attained such great perfection, courts of justice degenerated into mere judges of fights, and trial by battle superseded all other modes of redressing private wrongs.

Such a state of society bore its legitimate fruits. There were constant wars between lords and combinations against kings, and turmoil and strife was everywhere. There was no protection to life or property, and murder and robbery were common crimes. In some countries many of the chiefs or lords were heads of organized bands of robbers.

The people who tilled the soil sunk into a condition of abject slavery worse than any race of slaves in the world's history.

In the language of a great historian: "All Europe was a scene of intestine anarchy."

The downfall of that system and the rise of civilization was due directly to the acquisition of rights in individuals to acquire and enjoy private property.

Kings and lords for the sake of gain, and kings, sometimes, to weaken powerful lords, gradually granted this right and sold charters to communities to establish free towns until the number of free men became so great that the feudal system was destroyed.

The right of private property has ever been the mainspring to civilization.

Demagogues have ever seized upon this right, as a hobby, to incite the cupidity of those who believed they had not acquired their full share of this world's possessions. And to-day a large class of people believe that all property should be owned by every person in common. And still another class

have for their creed the destruction of all property, the leveling of all civilization and the reduction of man to a state of nature.

Every legislative enactment tending to produce uncertain, and every judicial decision tending to unsettle rules of property, is a step backward toward that chaotic state of society.

CONSTITUTIONAL GRANT OF THE POWER OF TAXATION.

"The right of private property is before and higher than any Constitutional sanction."

This provision of our Constitution recognizes that the right to private property is the fundamental principle of free government. "The right of private property existed before Constitutions, and is higher than their sanction. This right needs no Constitutional inhibitions on legislative power. Its sacred dominion cannot be invaded save as allowed by the constitution."

On the other hand, private property must contribute to the State the expenses of the protection afforded by government. The power to enforce this contribution by summary process is indispensable to the very existence of government itself.

"The State's ancient right of eminent domain, and of taxation, is herein fully conceded; and the General Assembly may delegate the taxing power, with the necessary restriction, to the State's subordinate, political and municipal corporations; to the extent of providing for their existence, maintenance and well being but no further."

This section of our Constitution recognizes the higher right of private property, with the accompanying necessity of taxation. And places the proper limit upon the taxing power.

Between the sanctity of private property on the one hand, and the necessity of government for its protection on the other, legislative power must be so exercised as to protect the one and promote the other.

In the language of the Court, in *Bagle v. Castile*, the

object of taxation is not to deprive the citizen of his property, but to enforce an equal and uniform contribution in money for support of government by necessary and appropriate modes for collection, without wanton and unnecessary sacrifice of private property. And the powers must be exercised in accordance with the principles, at least, if not according to the exact modes which had aforesaid been used in our own State and in similar free governments.

Requirements of statutes for the protection of the taxpayer are made in pursuance of this Constitutional rule, and cannot be omitted without invalidating the proceeding.

Within this limit the legislature should make statutes so as to protect as much as possible the rights of property, consistent with the necessary and speedy collection of the tax.

"In the execution of revenue laws the property owner is not a party; the proceeding is strictly against the property, and is made exclusively under statutory power. The officer sells something he does not own, and which he can have no power to sell except as he is made the agent of the law for that purpose. But he is made the agent only by certain steps, which must precede his action, and which under the law, are conditions to his authority.

If these fail, the power is never created. If one fails it is as fatal as if all failed."—Cooley on Taxation.

This rule was indorsed, in strong language, in *Jacks v. Dyer*, 31 Ark., 340. And was indicated, in equally as strong language, in *Hogins v. Brashears*, 13 Ark., and *Bettison v. Budd*, 21 Ark.

Unless dispensed with by the statute itself, all formal requirements of statutes must be complied with strictly, whether merely directory, for order and official convenience, or intended for protection of the tax-payer.

In most States statutes provide that all formal requirements not designed to protect the tax-payer are directory, merely,

and their omission does not affect the validity of the proceeding.

This is effected by different provisions in statutes; some provide that only meritorious defenses shall be allowed; some attempt to limit the owner to certain specified defenses, and some have even provided that the tax deed should be conclusive evidence that the law had been complied with. Whatever the language of these various statutes may be, their effect is the same.

All merely formal requirements for order or official convenience, or which can in no way affect the tax-payer, are exclusively within legislative control, and the legislature may provide their omission shall not invalidate the proceeding; or, if the legislature had not prior to the tax proceeding by any such statutes excused such omissions, then it has power to cure the proceeding by subsequent enactment. And this is the full extent of legislative power, whatever be the wording of the statute. When a statute by its terms attempts to pass this limit it enters the sacred domain of the right of private property and all thereafter is void.

Courts of some States, driven by what judges mistakenly supposed to be public necessity, have sustained legislation that overstepped these bounds. No public interest was ever subserved by such decisions, and a judicial robbery of private property was committed each time. Such decisions breed litigation. Courts have written volumes of opinions explaining subtle distinctions that could not have existed had the law been administered instead of following what judges vainly supposed to be public policy. Courts are never justified in violating legal principles to accomplish what judges believe some public interest.

"It is the function of the judge," said Coke, "not to make, but to declare, the law according to the golden metewand of the law, and not by the crooked cord of discretion."

Our Supreme Court, in the earliest cases, defined accurately

the limit of legislative power, and the doctrine of these cases has been steadily adhered to ever since. In no State in the Union has the court been more consistent than ours.

REVENUE ACTS PASSED SINCE THE WAR.

This occasion will not admit of a general history of the revenue laws of the State, nor a discussion of the general laws of taxation further than necessary to show the effect of the statutes to which I shall refer. Hence, I will confine my remarks to legislation since the war, and will point out a few defects in the laws and a few defects in their execution, usually found in the records of tax proceedings, sufficient only to show the general uncertainty of tax titles during this period.

The area of the State is chiefly timbered lands, as rich soil and as fine timber as can be found anywhere. When the war closed, the State was without revenues, and the people impoverished and unable to pay taxes on unproductive lands.

Under such circumstances laws were enacted, amended and changed as mere expedients, sometimes operating to extort greater revenues from the already over-burdened people, and sometimes to relieve them of their burdens, until the revenue laws became a system of patchwork rather than a system of stable laws designed to furnish permanent titles to property.

The first general revenue law passed after the war was approved July 23, 1868, although there had been various changes and amendments prior to that time. Two other laws were passed, the last one approved April 8, 1869. Thus, within a period of nine months, three revenue laws were passed. Officers in proceedings to collect taxes did not always keep pace with the rapidly changing requirements of these laws so as to make valid sales. Another general law was approved March 25, 1871, and still another April 23, 1873.

The time for payment of the taxes of 1872 was extended thirty days, and the Act fixed no date for sale. This avoided sales that year.—*Vernon v. Nelson*, 33 Ark., 478.

Sales for taxes of 1872, 1873 and 1874 were continued by law till 1876, so there could be no legal sale from 1872 till 1876. An Act approved March 14, 1879, requiring delinquent lands to be sold, without advertisement or public sale, was held void, because it exceeded the Constitutional grant of legislative power and contravened the higher law of the right of private property.—*Bagley v. Castile*, 42 Ark., 79.

There was, then, no time from 1878 till 1883, the date of passage of the present revenue law, when the law authorized a sale for taxes, yet sales were made each year. Between the Acts of 1868 and 1883, a period of fourteen years, one-half the time no sale could be made by law, yet sales were made substantially all the time.

DEFECTS THAT AVOID TAX SALES.

During the seven years of this period that sales were authorized by law wherever adjudicated, they have usually been found void, either from some jurisdictional defect, or the omission of some requirement designed to protect the tax-payer.

This resulted sometimes from official carelessness or negligence and sometimes from the rapid changes in the laws, which rendered it difficult for officials to keep up with the different requirements of the different laws.

The rates were changed nearly every session of the legislature, consequently excessive levies were frequent. This rendered sales void. *Graham v. Parham*, 32 Ark., 685; *Greenup v. Franklin county*, 30 Ark., 101; *Cope, County Judge, v. Collins, admr.*, 37 Ark., 653; *Brodie v. McCabe*, 33 Ark., 690.

Larger penalties have been charged against lands than allowed by law.—*Pack v. Crawford*, 29 Ark., 489.

The statute requires lands to be assessed and sold in separate tracts. This provision has been frequently violated.—*Spain v. Johnson*, 31 Ark., 314; *Montgomery v. Birge*, 31 Ark., 491; *Pettus & Glenn v. Wallace*, 29 Ark., 476; *Pack v. Crawford*, *supra*; *Crane v. Randolph*, 30 Ark., 579.

The statute requires a vote of the qualified electors of

school districts to authorize the levy of district school taxes. Such taxes have frequently been levied without such authority.—*Rogers v. Kerr*, 42 Ark., 100; *Cairo and Fulton Railway Company v. Parks*, 32 Ark., 131; *Worthen v. Badget*, 32 Ark., 496; *Hodgkin v. Fry*, 33 Ark., 716.

If the delinquent list is returned before the time fixed by law, the sale is void.—*Hickman v. Kempner*, 35 Ark., 505.

The Collector must attend, at the county seat, the full time required by law.—*Hare v. Carnall, et al.*, 39 Ark., 196.

The warrant is the Collector's authority. Without a proper warrant he is a trespasser.—*Lamb v. Farrell*, 21 Fed. Rep., 5; *Cooley on Taxation*, 289.

Proper advertisement of the delinquent list is essential to the validity of the tax sale.—*Thweat v. Black*, 30 Ark., 732.

There must be a valid assessment, or there can be no lien on the land.—*Bettison v. Budd*, 21 Ark., 581; *Cairo and Fulton Railway Company v. Parks*, 32 Ark., 131.

These are some of the defects already passed upon by our Supreme Court.

It will be seen by an examination of these cases that no one of these defects was a mere informality; but each was a jurisdictional defect, or the omission of some statutory requirement that might in some way prejudice the tax-payer.

A levy void, for any reason, is a jurisdictional matter.

The power to tax is confined strictly to the object. There is no jurisdiction to sell for more than is due. Hence the illegal penalty rendered the sale void, in *Pack v. Crawford*.

Without a warrant the collector has no authority; hence this defect is jurisdictional.

An assessment is the foundation of the proceedings. Hence it is a jurisdictional matter.

Notice of the sale is jurisdictional. The statute, as to notice, is mandatory.

"The statute, as to notice, must be complied with strictly.

This is one of the most important safeguards which has been necessary to protect the interests of parties taxed."—Cooley on Taxation, 335.

The statute requiring lands to be sold in separate tracts is mandatory. And there is good reasons for it. Each tract is chargeable with its own tax only. The statute requires each to be assessed separately. Unless so sold it is not only sold for its own tax, but for the taxes of all other tracts sold with it.

The owner has the right to redeem any tract. Unless sold separately he would be compelled to redeem all or none.

The return of the delinquent list before the time required by law, as in *Hickman v. Kemper*, deprived the owner of the full time allowed to redeem. And the failure of the collector to attend at the county seat the full time required, as in *Hare v. Carnall et al.*, deprived the tax-payer of the opportunity to pay for the full time allowed by law.

These were meritorious defenses. "A meritorious defense," said the Court in the late case of *Ratcliff v. Scruggs*, 46 Ark., 96, "means any act of omission prejudicial to the interests of the land-owner, as well as jurisdictional and fundamental defects, which affect the power to levy the tax or to sell for its non-payment." There is, in fact, no legal distinction between what is designated as a jurisdictional defect and a defect prejudicial to the interests of the land-owner. They are alike meritorious defenses. They all alike transcend the boundary of legislative power to excuse or cure.

In addition to the defects named in these cases, there are others common to the records of tax proceedings, that fall within the same rule and are equally potent to destroy the sale. I will mention a few.

All county taxes for the year 1874 over five mills, and all State taxes over one mill in 1876, were remitted by law, yet sales were made in many counties without making the reduction of the amount remitted.

In 1875, within a period of thirty days there were three

Acts passed fixing different times for meetings of Courts to levy taxes, consequently County Courts in many counties were held at a time not authorized by law. Another Act was passed to cure these void levies. This was clearly beyond the power of the legislature.

The meeting of the officers of a court at a time not authorized by law is not a court.—*Dunn v. State*, 2 Ark., 252. This case was cited and applied to County Courts for levying taxes, in *Graham v. Parham*.

That void proceedings cannot be made valid will not be controverted.

The statute requires the assessor to attach to the assessment roll his affidavit that each tract or lot of land is assessed at its true value in money—this affidavit has been omitted frequently. In *Lamb v. Farrel*, 21 Fed. Report, 5, a case determined in the Eastern District of this State, the Court said :

“The failure of the assessor to authenticate his assessment roll, by oath, required by the statute is fatal to the validity of the tax sale, irregularities less serious have been held to avoid tax sales in this State.” Citing *Hickman v. Kempner*, *Hare v. Carnall*, *Crane v. Randolph*, *Pack v. Crawford*, *Vernon v. Nelson*.

This defect is, as the Court held in this case, more prejudicial to the tax-payer than the defects for which sales were held void in the cases named.

It is supposed by many that in the late case of *Ratcliff v. Scruggs*, the Supreme Court held such a defect to be a mere informality that the Court might disregard. This is a mistake. The omission of such an affidavit as this was not before the Court in that case and could not have been determined.

In speaking of the effect of omissions in tax proceedings in the case of *Wiley v. Flournoy & Rice*, 30 Ark., 612, the Court said: “A statute is never to be regarded as directory merely, or if any of its provisions dispensed with when the

Act required, or the omission of it can by any possibility work advantage or injury, however slight, to any one affected by it in such case it can never be omitted."

Under a Constitution requiring uniformity in taxation, the value placed upon each person's property determines the share of public burdens he may be called on to bear.

In *Bettison v. Budd*, 21 Ark., the Court said: "An assessment is essential as the first step in a proceeding to sell land for taxes. It has been said to fill the place of a judgment in an execution sale.

"If there is no assessment, there can be no charge upon the land."

This oath of the assessor is a guarantee to the tax-payer that he is charged with his just proportion of the tax. No other requirement protects him in this.

If the assessor does not take the oath of office, it does not affect the tax-payer individually. It affects the public. That he pays his proportion is the only question in which he is individually interested.

The failure to attach the certificate or other statutory verification, says Judge Cooley in his work on taxation, "Would plainly be a failure to comply with the statute in its essentials; the verification in express terms being more obviously a matter of substance than the signing." He cites, in support of this, many cases from Courts of different States.

In *Marshall et al. v. Supervisors*, 42 Wis., 515, the Court, speaking of such an affidavit, said: "The statute is a just and wise enactment, to secure the integrity of assessments, and so to fulfill the Constitutional rule. The oath required of assessors, that they have made the assessment in strict compliance with the statute, is manifestly intended to secure the fundamental rule of taxation against indolence, carelessness, evasion and willfulness, as well as partiality and fraud in those officers.

"The affidavit is the evidence accompanying the assess-

ment that the values have been arrived at justly and properly in compliance with the statute, and to fulfill the Constitutional rule.

"The affidavit is of the substance and not of the form of the assessment."

In *Chestnut v. Elliott*, 61 Miss., 569, the Court held the omission of this affidavit did not invalidate a tax sale. The opinion is very short and cites no authorities. The question of omissions that might injuriously affect the tax-payer was not considered. In fact, in Mississippi, by their constitution of 1868, they abolished this rule and left nothing but bare jurisdictional questions as defenses to tax sales.

Sec. 8 Art. 2, of the Constitution of Mississippi provides as follows:

"The legislature, at its first session, shall provide by law for the sale of all delinquent tax lands. The Courts shall apply the same liberal principles in favor of such titles as in sale by execution."

This Constitution encroaches more upon the right of private property than the Constitution of this State.

In *Virden v. Bowers*, 55 Miss., 1, the objection to a tax sale was that the lands were not advertised.

The Court said: "The first clause of this section of the Constitution is directory and confers no power which the legislature did not already have, but the last clause introduces a permanent rule which the legislature could not abrogate." The Court said the failure to advertise lands for sale under an execution did not defeat the sale, and that it had been so held prior to the adoption of that Constitution; that the Constitution was adopted with reference to that construction of the law.

The legislature under that constitutional provision enacted that no error in the advertisement or failure to advertise should invalidate the sale.

The Court said it could hardly be doubted, in view of the

provision of the Constitution quoted, that the legislation is valid.

I have said this much as to the effect of the omission of the statutory affidavit to the assessment roll on account of what I conceive a wrong impression of what was determined in *Ratcliff vs. Scruggs*. I submit that I have already shown sufficient to prove that these tax titles are uncertain rules of property.

LEGISLATION FOR DISPOSITION OF FORFEITED LANDS.

The laws made for the disposition of forfeited lands show well the State and the public regarded such titles as at least uncertain.

An Act was approved April 8, 1869, with this preamble :

“WHEREAS, The title to large quantities of lands heretofore sold to the State for taxes and yet unredeemed remains in doubt, whereby the improvement of the same is prevented and the State is receiving no revenues therefrom.” The Act then provides that owners of lands before that time forfeited to the State might donate or subscribe them to any railroad to aid in its construction, and that the claim of the State should be released to the railroad company.

Another act was approved April 21, 1873, giving owners of forfeited lands that had been subscribed but not deeded to railroads till July 15, thereafter, to redeem from the State.

Another act was approved December 14, 1875, giving owners of all lands forfeited prior to that time one year to redeem. These last two acts show the State had little regard for the titles acquired by forfeiture, and sought the taxes due rather than to hold such titles.

An act approved April 29, 1873, donated all forfeited lands, in fifty-eight counties, to eleven different railroads, conditioned on their construction. Not one was ever constructed. At the session of the legislature in 1879, seven different acts were passed donating forfeited lands to different railroads. . These

grants did not furnish one dollar of credit to build a railroad. Not that the lands were not valuable, for that fact was conceded in later years, but for the reason it was well understood the State had no title to the lands granted.

Forfeited lands were for many years sold by the auditor for the amount simply of the tax lien against the lands, and were donated to men, women and children, to residents and non-residents. Women and children were not required to make improvements, and those who were required to do so seldom did it.

The theory of the legislature seems to have been that people who obtained these titles might pay taxes. And legislation tended to that end more than to furnish permanent titles to the lands. The lands so disposed of were rarely ever improved and the taxes seldom paid, so that when donated or sold they usually reverted back to the State and were frequently retaken by others in the same manner, until a large portion of these lands were conveyed by the State several times to different people and were never improved by any.

The object of the donation law should be to furnish homes to citizens, like the government homestead law. It is of vastly more importance to the State that good titles be furnished for homes, than that speculators be always safe in their investments. However, speculators may be of some service to the State. If they acquire good titles to lands, self interest prompts the payment of taxes, and, in the end, improvement and occupation of the lands. But it is the great number of permanent people with permanent homes that makes a great and prosperous State. The State acquired many millions of acres from the government with perfect titles, yet not an acre of that was ever donated. The State reserved the good titles for sale, exclusively, and gave for homes to poor citizens, unable to buy, these worthless titles.

The few improvements made by those who accepted donations in good faith were not usually of that kind made by peo-

ple who settle permanently. When they planted they had no assurance they could gather, and when they built no assurance they could stay. Hence, they usually did as little of either as possible. Such improvements were readily abandoned. The donation law, with such titles, fostered a shiftless, changing population. The shabby, deserted habitations scattered through our forests, were not pictures calculated to stimulate healthy immigration. The State could not inflict a greater injury on a poor man seeking a home, than to give him one of these worthless titles.

STATUTES THAT DID NOT PROHIBIT UNJUST ASSESSMENTS AND
THEIR EFFECT.

By the Act of April 8, 1869, and March 25, 1871, the assessor was required to attach to the assessment roll an affidavit that he had not assessed any tract or lot of land at less than its true value in money.

Assessors were paid large commission on the money raised on assessments made by them. This stimulated them to put fictitious and exorbitant values on property. There was no obligation on the assessor to make an equal and uniform assessment.

He was at liberty to punish whom he pleased, and received additional commissions in proportion to the punishment inflicted. And still he could truthfully swear he had assessed none at less than the true value.

For five years assessments were made in this manner. Wild lands were frequently assessed as high as \$5 and \$10 per acre, when they could not have been sold for twenty-five cents. The owners were required to pay the value of the lands in taxes every year, or allow them to forfeit. The country had not yet revived from the effects of the war. Many owners of wild lands had been unable to pay the taxes on them before this. The burdens imposed by these assessments were more than could be paid, and substantially all the balance being by far the larger portion of the forfeited lands, had to be abandoned

by the owners. Hundreds of thousands of acres went annually to the State and were donated, and reverted and redonated until millions of acres were covered with these titles.

The proportion of lands sold was small as compared with the amount donated. One report of the Commissioners of State lands showed over 183,000 acres donated against less than 5000 acres sold during the same period.

These laws neither produced the desired revenues nor conducted to the welfare of the State. And Arkansas, a State unexcelled in natural resources by any other, was in a most humiliating condition. Wild lands, composing the larger portion of the area of the State, were regarded as practically worthless. Business interests were paralyzed. There was no substantial emigration, and the State was forced to borrow money to pay the running expenses of the Government. The most humiliating circumstance was that the State's credit was not a sufficient guarantee for the money, and collaterals had to be placed, and sometimes notes of citizens given, as security.

True, there were other causes that contributed to this state of affairs. But the causes to which I have referred played the principal part. And under their influence the State was long in rising from the effects of the war.

PRESENT CONDITION OF THE STATE.

Fortunately the laws governing titles to lands other than tax titles have been stable, as the laws of other States. In fact fewer questions arise and there is less uncertainty than in many other States. This fact in time operated to counteract to a great extent the bad effect of these uncertain tax titles. Taxes were gradually reduced from year to year until the last legislature levied but four mills State taxes, and two mills of this were school taxes. There are three lines of railway passing through the State and one reaching the center, besides several branches and smaller roads in other portions of the State. Along these roads have grown up in the last few years many

thriving towns, and some have grown to be cities. There is a healthy emigration. The country is being rapidly improved and the markets of the world are now open to our timbers. There has been developed vast coal fields, iron and other metals that form the basis of great wealth, which are found to be inexhaustible. The past season has developed the fact that our railroads are entirely inadequate to handle our productions and the State instead of borrowing money to pay running expenses, has an abundance in the treasury.

No State in the Union has made more rapid progress in the past few years than Arkansas. The State rose to its present condition of prosperity in spite of these tax titles.

By uniform course of judicial decision the status of tax titles became so fixed that they were no longer regarded as rendering titles uncertain. And unless accompanied by possession sufficient to create a bar by limitations they did not rise to the dignity of a doubtful title.

It was this fact that caused the passage of the "Overdue Tax Act." There were at that time on the records of the land office 4,500,000 acres of forfeited lands. It was recognized that the State had a lien for back taxes, but generally had no title. The legislature, for the purpose of enforcing the lien for these back taxes, passed the Act, and entitled it "An Act to enforce the Payment of Overdue Taxes." By virtue of this Act bills in equity were filed in counties where there were large amounts of forfeited lands. The forfeitures were universally declared void, and the amount of back taxes fixed by decree and paid by the owners of the lands or sold under order of the Court to satisfy the liens fixed by the decrees.

Full three millions of acres of lands were taken from the records of the land office, by decrees of courts of equity and the titles settled by virtue of this Act. Large amounts of outstanding tax titles have been settled with owners of lands. And some have been litigated. But the amount of litigation has been

exceedingly small, considering the great amount of these titles that have been cleared up. So large an amount of these titles have been settled in these various ways that it has been an important factor in the State's rapid progress.

JUDICIAL DECISIONS MARK BOUNDARIES OF LEGISLATIVE POWER.

If a tax title should be found that answers the requirements of the law it is of as much public importance that it be sustained as that it be defeated when it does not answer such requirements. In this way a stable rule of property is maintained. This has always been the rule in this State. No case has ever held a tax title bad for mere formalities.

In *Hogins v. Brashears*, 13 Ark, 251, the Court said :

"Although it is the policy of our laws to uphold tax titles by every liberal intendment consistent with the rules of law, as is manifest by the provisions of the statutes that no exception shall be taken to any deed made by any collector for lands sold for taxes, but such as shall apply to the real merits of the case, and are consistent with a liberal and fair interpretation of the intention of the General Assembly.

"Nevertheless we have no authority to depart from these rules of law in order to sustain any pretended sale of property by a collector of taxes under color of his office, beyond the true boundary of his authority.

"And this, in reference to lands, is no general authority to sell, but only to sell such lands as are liable to be sold for taxes, and these only in the manner prescribed by law.

"And thus he may not only pass his defined boundary in the act of selling, but in the mode of the act. And when he does so, his acts, although under color of authority, are in law but the private acts of a private person."

Again, in *Bettison v. Budd*, 21 Ark., 580, the Court said :

"Under our laws tax titles are to be upheld when held in conformity with law, and when they can be sustained by any reasonable intendment.

"No exception can be taken to a deed but such as shall apply to the real merits of the case.

"Trivial non conformity of the proceedings of the sale with the law, which in no way touch the merits of the case, would not invalidate the sale.

"On the other hand, the proceedings to sell land for taxes is a special authority, and there must be a substantial compliance with the law, or the sale cannot be sustained."

These two cases mark the rule that has been steadily adhered to in this State ever since. They give the proper boundaries to legislative power.

In the late case of *Ratcliff v. Scrugg*, one of the points determined was the effect of statute, that attempted to limit all objections to the assessment, levy or sale, to two years from date of the sale.

The Court had previously held the same statute unconstitutional as a limitation law. But in this case the Court gave to it the same effect as the old statute, passed upon in the above cases, and defined a meritorious defense to be any act or omission of the taxing officers, prejudicial to the interests of the land owner; as well as jurisdictional and fundamental defects.

The Court, by so construing the statute, changed no rule of property. Every case that has been decided from *Hogins v. Brashears* to this case falls within this rule.

Opinions of Courts are evidence of the law. One case alone unless acted upon for a long space of time does not form a rule of property. But when a series of decisions are acted upon for a long space of time they form rules of property as imperative as a positive enactment. Where a rule of property has been once so firmly adopted, Courts will not change it, although convinced the original cases are wrong in principle.

In this State the requisites of a valid tax-title have been established by a series of decisions running through a period of more than thirty years.

Many suppose the Supreme Court in this late case unsettled these firmly established rules. I have already said enough to show this untrue.

I desire, however, to deal further with this case.

In speaking of the statute attempting to limit all defences to two years from date of sale, the Court said: "But in this sweeping enactment the legislative department transcended the boundaries of its power, it could not under the Constitution of 1868, or any similar Constitution, enact a statute which should transfer one man's property to another under the guise of a sale for nonpayment of taxes where there had been no assessment or levy of taxes. This would not be due process of law. Neither could it prescribe a short period of time nor indeed any period within which the owner could make objections, for such fundamental defects, he remaining in possession and being in the instance supposed, in no default for not paying his taxes. This, with the exception of the latter portion of the last sentence, is unquestioned law. "*He remaining in possession and being in the instance supposed, in no default for not paying his taxes,*" is, in my opinion, an inadvertant statement.

It had nothing to do with the decision of the case. The Court did not mean to say a man shall always remain in possession of his property and pay everything that may be levied or assessed before he can object to its sale for taxes. Possession has nothing whatever to do with the legality of a tax sale or with the right to question its legality. This statement could not qualify what was said before it; it would contradict all that has been said, and affirm that a tax sale is conclusive, except the owner remained in possession and paid all taxes charged. But it was the opposite of this proposition the Court was maintaining in the argument. This statement would overrule the balance of the case, and in fact would overrule every other case ever decided by the Court on that subject. But the Court immediately following this said:

"This two-years' statute came before this Court in the *Cairo & Fulton Railway Company v. Parks*, 32 Ark., 131. The substantial defense in this case was that the County Court had attempted to levy a school tax without being thereto authorized by a vote of the qualified electors of the district. It was decided that the statute had no application to the case, and the decision is sound, since the objection went to the jurisdiction of the County Court to levy the tax. It was not a question of irregularity but one of power.

The Court further said: "Neither the validity nor the construction of this statute has been settled by previous decisions of the Court further than it does not deprive the former owner of any meritorious defense, and by meritorious defense we mean any act or omission of the revenue officers in violation of law prejudicial to his interests, as well as those jurisdictional and fundamental defects which affect the power to levy the tax, or to sell for its non-payment. But while the Act does not have the free course that its framers intended, it is still our duty to give to it such effect as may be consistent with legal and Constitutional principles. And this may be best accomplished by restricting its operation to mere irregularities or mere informalities on the part of officers having some duties to perform in relation to the assessment, levy of taxes, or sale. Our legislations and previous decisions have always distinguished between these class of defects, which have no tendency to injuriously affect the tax-payer, and substantial defects, such as go to the jurisdiction of the levying court, to levy a particular tax or the power of officer to sell for non-payment, or omission in any legal duty which is calculated to prejudice the landowner. Thus the Revised Statutes of 1838 provided that no acceptions should be taken to any tax deed except as such applies to the real merits of the case, and this was the law down to 1868."

I have quoted this much to show that in construing this statute, the Court simply held it to mean the same as the old

statute passed upon in *Hogins v. Brashears*, and *Bettison v. Budd*. And these two cases, as I remarked before, mark accurately the boundaries of legislative power.

The Court in this late case on the subject of legislative power said: "We have no doubt of the power of the legislature to cure any irregularity or illegality in a tax sale, which consists in a mere failure to observe some requirement imposed not by the Constitution but by the legislature itself, and a non-observance of which does not deprive the owner of any substantial right; such as the failure of the collector to give bonds (*Powers v. Peny*, 59 Miss.), or of the failure of the assessor to take the oath of office or verify the assessment list by affidavit. The legislature might have dispensed with one or more of these requirements, as was done in the revenue Act in July, 1868, so it might provide that a failure to comply with any or all such requirements by any officer who was charged by any duty in the proceedings should be cured after two years from sale."

This defines legislative power the same as other cases.

The general language of the Court in giving examples of mere formal irregularities that can in no way affect the former owner, must of course be confined to the case the Court was considering. The assessment under consideration was made under the Act of April 8, 1869, that required the assessor to attach to the roll an affidavit that he had not assessed at less than the true value in money.

The Court decided that this affidavit was not designed to protect the tax-payer, and this is undoubtedly true. The absence of such an affidavit could make no difference to the tax-payer, the assessor was at liberty to mulct him as much as he pleased, either with or without the affidavit.

That the Court determined rightly as to the design of that particular affidavit, is shown by the preamble to the Act continuing payment of taxes to which I have referred. Approved February 25, 1875, as follows:

"Whereas, the people are in a bankrupt and impoverished condition, brought about by the enormous taxes unjustly imposed upon them for the last five years." The Act continued the payment of taxes until 1876.

This was the period during which assessments were made under laws which required such an affidavit. The law was changed so that the assessor was required to attach to the assessment roll an affidavit that he had assessed each tract or lot of land at its true value in money. Who can say that this change in the law was not made to protect the tax-payer from the exorbitant and unequal assessments that had been made under the prior law? This affidavit required the assesment to be made by the only Constitutional mode it can be made to insure equality and uniformity.

No State in the Union can produce stronger proof of the efficiency of this affidavit than Arkansas. It can hardly be charged that in that critical period in the history of the State, caused largely by outrageous assessments of property, the legislature made such an important change in the law without any special design in so doing. If the design was to make the assessments equal and uniform, then it was for the protection of the tax-payer and cannot be dispensed with.

The Court says: "The legislature might dispense with such an affidavit of the assessor, or might provide that its omission might be cured after two years. I do not admit that the legislature may omit to furnish such safeguards as are necessary to enforce the collection of taxes by the Constitutional rule of uniformity.

At present, however, it is sufficient to say that the legislature has not provided that an affidavit designed to enforce equal and uniform taxation may be omitted. The remark of the Court I have quoted could not, and I apprehend was not designed to apply to any but the affidavit under consideration.

I have not discussed the statutory affidavit at such length because its omission occurs more frequently than others. In

fact it occurs less frequent than many other fatal defects. It falls within the class of defects that is beyond the power of the Court to excuse, and I have used it more to illustrate the rule than for any other purpose, my object being to point out the principles underlying our decisions on tax titles.

From all our decisions it fully appears that landowners can interpose only meritorious defences to tax proceedings, and on the other hand it equally as well appears that by our organic law the legislature is powerless to prohibit any meritorious defense to such proceedings.

The Constitution of the State of Mississippi, to which I have referred, granted broader power of taxation, and authorized the sale of property for taxes, without throwing around it the safeguards required under such a Constitution as ours.

Some people believe this to be a step in advance in the science of government, and therefore the better policy to adopt. It is argued that it enforces prompt payment of taxes. That the land owner knows that his land will be sacrificed, regardless of any omissions or commissions on the part of officials prejudicial to his interests, short of an absolute lack of jurisdiction to sell, unless the amount claimed be promptly paid.

If this be the true policy, then the State of Mississippi, having adopted this Constitution in 1868, should have outstripped Arkansas by far, long ago. The great area of timbered lands from which it was so difficult to derive revenue, being nearly equal and much the same in character. But the fact is, Mississippi is among the hindmost, while the past few years have placed Arkansas among the foremost of the Southern States.

Unrestricted power to enforce taxes renders property precarious and cheapens it. Sickness and misfortunes come, and this relentless power, like the "sword of Damocles," hangs constantly over every man.

The broader the grant of the power of taxation, after the proper boundaries are passed, the more precarious property rights become, until it reaches the point of absolute confiscation at will of the State, when the right of private property would be destroyed and free government be at an end.

FORFEITED LANDS AND DONATION LAW.

The report of the Commissioner of State Lands shows less than 1,500,000 acres of forfeited lands on the records of his office, over 500,000 acres of these passed through Courts of Equity under the overdue tax Act, and were purchased by the State.

These titles are based upon decrees of Courts of Equity enforcing liens for taxes. They have lost the character of tax titles and assumed that of titles acquired under judicial sales, and the State's title to these lands wherever the court had jurisdiction is doubtless good.

There is, however, nearly 900,000 acres of lands on the records of the office substantially all of the character of titles I have been discussing. These lands are now subject to sale at fifty cents an acre and to donation. The different Land Commissioners since 1878 have recommended the repeal of the donation law on account of the frauds practiced under it. The present Commissioner recommends either its repeal or amendment so as to require three years' residence before a deed is issued.

The donation law was passed in the early history of the State. If good titles had been given instead of bad ones, and a longer residence been required, so as to insure the applicant's good faith that he wanted the lands for a home it might have resulted in much good to the State.

In the present condition of the law and the titles given, it has substantially lost its character of a homestead law and become a shield for fraud.

The present Commissioner of State Lands in his report to the Governor, says he has investigated numerous cases of the

grossest fraud, mostly instigated by timber speculators and timber thieves who use the donation law to protect them from prosecution for stealing timber.

He says this class of people procure persons to make applications for donations, and swear that they apply for the purpose of occupation and settlement by the applicant, and procure a justice of the peace to certify that the applicant is living on the land; and has five acres cleared and fenced ready for cultivation. He says he is satisfied that a majority of these certificates are untrue. That investigation has shown numerous cases in which not a tree had been cut when the justices made the certificates, and numerous other cases were found where only sham improvements had been made. That in such cases, usually within a short time after the deeds were issued to the donees, they convey to some timber speculator, who strips the lands of timber.

He says that in sections of country tributary to railroad transportation, fraud is the rule, instead of the exception.

It is a common thing to find donations in the middle of large cypress brakes. Men have sworn and justices have certified, that the donees were living there and had five acres cleared and fenced ready for cultivation, when in fact the place is a dismal swamp fit only for the habitation of frogs and aligators, and valuable only for the timber.

I believe the donation law should be amended so as to require sufficient residence, prior to the issuance of a deed, to insure the good faith of the donee.

I believe that no more donations or sales of forfeited lands now upon the records of the State land office, of the character I have discussed, should be made, until the State can give a good title.

A law should be passed authorizing these titles to be cured by judicial proceedings, so the State can make a good title on sale or donation. If this was done then a poor citizen who applies for and receives a donation, will have the same encour-

agement to improve the lands as if he had received the same from the government under the homestead laws.

No man now who owns unquestionable title to land allows it to forfeit. Substantially all the lands forfeited now are such as have been sold before or donated and purchased for taxes. The holders of the tax titles, not having sufficient confidence in their titles to pay taxes, or having stolen the timber off, allow it to forfeit.

These outstanding questionable titles will, in this way, soon all be back on the records of the land office as forfeited lands, and if not donated or sold again until the State can make good titles, Arkansas will in the near future bear a reputation for good titles that will exceed her past reputation for bad ones.

Which paper, upon motion, was ordered printed with the proceedings.

The paper and resolution of Mr. Cohn were generally discussed by the members.

Upon motion, the Association adjourned until 10 o'clock Thursday morning, January 6, 1887.

THURSDAY MORNING, January 6, 1887.

The Association met at 10 o'clock a. m., pursuant to adjournment. J. M. Hewitt presiding.

The first order of business being as follows:

THE ANNUAL ADDRESS, BY FRANKLIN DOSWELL.

At the last meeting of this Association we were entertained with a discussion of the impolicy of the exemptions of property from sale under execution. We were told by one gentleman that these exemptions detracted from the credit due to the owner of small means and compelled him to resort to a mortgage to supply his wants. We were next told that the unfortunate debtor should be further protected against his improvidence by exempting from the Anaconda a sufficient amount of property to supply the wants of his family for an indefinite period. The first gentleman told us that all exemptions should be abolished; the other told us that so far from abolishing

exemptions; they should be further extended to the mortgagee; that the debtor who had obtained supplies for his family upon the faith of the mortgage should be allowed to retain the property without paying the debt. These conflicting views are expressed by practical men engaged in the active business of life. The sympathy of each tends to the relief of the unfortunate debtor, but by methods directly opposite. It will be the task of the present writer to show how these diverse views may be reconciled.

To this end we will take a hasty review of the remedy afforded by the law to enforce the payment of the debt. As all of the States have passed through nearly the same process, we will take our own State with the laws of which we are more familiar as an example, and trace the changes of the remedy for the collection of a debt.

At the time of the admission of the State in the Union, the creditor would have sued out a *capias ad respondendum* and held the debtor in custody from which he might escape by giving bail to appear and answer the action. When judgment passed against him, a *capias ad satisfaciendum* was sued out and the body of the debtor was taken into custody. From this he could escape only by paying the debt or by the leniency of the creditor.

If the failure to pay was a crime, the remedy was at least logical. The debtor should be punished.

It was thought, however, that this indefinite imprisonment was too severe a punishment. By the Constitution of 1836, Art. VII., Sec. 2, it was provided that the person of debtor, unless where there is strong presumption of fraud, shall neither be imprisoned nor continued in prison after delivering up his estate for the benefit of his creditors, in such manner as may be prescribed by law. In pursuance of this provision, the chapter of the Revised Statutes entitled "Insolvents" was enacted, and put in force March 26, 1839, whereby the person of the debtor might be discharged from imprisonment by surrendering all his property for the use of his creditors "except

the wearing apparel of himself and his family." This was certainly a great advance from indefinite imprisonment. Doubtless the pessimists of that day prophesied the most dire calamities to follow such a relaxation of the law rendering men honest by compulsion. Nevertheless the country prospered.

The next step was the Act of February 3, 1843, by which imprisonment for debt on original, mesne or final process, was abolished, "except in cases of fraud alledged by the plaintiff, supported by his affidavit and the affidavit of some other credible person to the facts on which such allegation of fraud is founded." This Act was said to apply to the remedy only and did not impair the obligation of the contract within the meaning of the Federal Constitution.

With us the farmer has always been a favored class. It was provided by the Revised Statutes of 1838-9 that one horse, one cow, one plow, one axe, one hoe and one set of plow gears, should be exempt to the farmer. The ladies also have always been favorites with us, as it is proper they should be everywhere. Hence, we find that the spinning-wheel and cards, one loom, and all the "spun truck" and cloth manufactured for family use; any quantity of cotton and wool not exceeding twenty-five pounds, the wearing apparel of the family, two beds and bedding, and such other household and kitchen furniture as might be necessary were exempted; the tools of trade, arms and military equipments, and provisions on hand for family use were to be exempt from sale under execution. This was quite liberal for that day and age, but the family were not left a home to shelter them until it was provided by the Act of December 5, 1840, that it should not be lawful to levy upon and sell any improvement on the public lands upon which the debtor actually resided. This is our first homestead law, and was perhaps sufficient for that day. It appears that if the debtor entered the land and paid for it, it might be sold under execution. It was exempt only while it remained an improvement on the public land and was actually resided on.

By the Act of January 2, 1851, there was a further exemption "of all books, maps, globes, manuscripts, family pictures, and scientific apparatus belonging to any citizen of this State, when not kept as merchandise, and of a value not exceeding \$300.

The next great advance was the Act of December 8, 1852, one hundred and sixty acres of land, being the residence of a house holder or head of a family, male or female, and a free white citizen, was exempted from sale as a homestead. But this was somewhat in advance of public sentiment of the day; but little advantage was taken of the Act. Improvident men, still continued to a much later day, to take the title to homes in the name of the wife. But this has become rather dangerous of late years, since the wife has been authorized to convey her own real estate discharged of curtesy without the husband's consent. The benefits of this Act were extended to the widow and children so long as they occupied the homestead. The Act was construed very liberally. A resident foreigner was declared to be a citizen within the purview of this Act. The occupancy of the widow and children might be constructive merely. The children, during the infancy, could not abandon the homestead. One town or city lot was also exempted to the inhabitant of the city or town. "The lot" as to quantity, was liberally construed.

The doctors next come in for a blessing. We find that by the Act of January 22, 1855, the library, riding horse and medicines of a practicing physician were saved.

Next in order follows the Act of March 11, 1867, which greatly enlarged all former exemptions and extended their application to classes not before enumerated. This was of short duration and was passed by those who felt very keenly the disastrous effect of the great unpleasantness. It was vainly attempted to make the exemptions apply to contracts made before as well as those made after the passage of the Act. Married men were protected against judgments for torts.

It will be remembered that the Constitution of 1836 provided that the person of the debtor should not be imprisoned for debt after the surrender of his property. The next Constitutional advance was in 1868. All remember the liberal provisions of that instrument. Personal property of the value of \$2000, to be selected by the owner, and one hundred and sixty acres of land, not exceeding in value \$5000, was reserved to every citizen of the State, male or female, married or single. In lieu thereof he might select one town or city lot with the appurtenances, of like value. The benefits were extended to the widow during her widowhood, and to their children during their minority. It could not be encumbered except for laborers' and mechanics' liens, taxes and purchase money. These exemptions were restricted to debt by contract; torts were properly excluded. These exemptions were probably more liberal than the exigency of the times required. The debtor who owned \$5000 of real estate and \$2000 of personal property could not be considered poor or to require very much protection against his improvidence. It was thought that the unmarried man was not upon principle entitled to so large an exemption as the married man with a family dependant upon him for support.

The Constitution of 1874 responded to this feeling by restricting the homestead to married persons and heads of families, and reducing the exemption of personal property to \$500 in the case of married persons, and \$200 in case of the unmarried. As usual these exemptions were extended to the widow and children during widowhood and minority. The homestead outside of a town or city was not to exceed one hundred and sixty acres of land of the value of \$2500, but was not to be reduced below eighty acres of land regardless of value. The benefits were extended to the widow and children. With certain exceptions the homestead is not subject to the lien of a judgment. It will be observed that both husband and wife may claim the homestead and exemptions.

Thus it will be seen that within fifty years we have passed from imprisonment for debt to exemptions of homestead and personal property for married persons to the value of \$3000; that the unmarried man may retain personal property to the value of \$200, in addition to his wearing apparel. The tendency has been all along to an enlargement with one exception only—the Constitution of 1874. It is now proposed to prevent the incumbrance of the homestead by mortgage and to allow the debtor to reserve from the operation of the chattel mortgage property to the value of his exemptions. Evidently this is in the line of progress.

The assessed value of the real property of the State is, in round numbers, \$72,600,000, exclusive of railroads. The value of personal property is \$52,000,000. The total polls of the State are 192,600. There are nearly as many women as men. This would give a total of adult persons, competent to contract of 384,000. Granting that the entire property of the State, exclusive of railroads, is owned by the adult population, the average of personal property to the adult citizen would be \$135. The average of real property would be \$187 and the average of both real and personal property would be \$312. But no inconsiderable portion of the property of the State is held by non-residents and infants. Hence these averages would be above rather than below the mark. Thus it will be seen that taking the highest average, the personal exemptions of the unmarried man are largely in excess of the average wealth in personal property. The homestead and personal property exemptions of the married man are nearly ten times the average wealth. Evidently the average citizen is not interested in an exemption of the value of \$3000 and while protection to the poor debtor may be the ostensible it cannot be the sole reason of these laws.

We have seen what becomes of the homestead after the death of the debtor; we will now look to the personalty. By the revised statutes of 1838, the widow takes one-third of the personalty of which her husband died possessed. If she

should have no children to support she took one-half. The courts held that the words personal property did not include choses in action. But the General Assembly was equal to the emergency and covered the case by the Act of 1859 saying that choses in action should be included. Thus, Apperson deposited with a private banker \$2000 on the 12th of August. On the 13th the banker died childless. The widow immediately became entitled to \$1,000 of the deposit. If there had been children to support she would have taken only one-third of the boodle.

By the act of January 1, 1851, if a person died leaving a widow or children and his estate, real and personal, does not exceed in value the sum of \$300, it was vested in them absolutely. If the estate does not exceed \$800 in value \$300 of it was vested in them. (It would seem that where there is no widow and no homestead and the estate is insolvent, that the infant children would be entitled to \$300 absolutely).

But this was not the process in the good old times. "Now there cried a certain woman of the wives of the sons of the prophets unto Elisha, saying: 'Thy servant, my husband, is dead; and thou knowest that thy servant did fear the Lord, and the creditor is come to take unto him my two sons to be bondsmen.' And Elisha said unto her: 'What shall I do for thee? Tell me, what hast thou in thy house?' And she said: 'Thine handmaid hath not anything in the house save a pot of oil.'" We would have given the widow the house and one hundred and sixty acres of land, the two boys to cultivate it for her, the pot of oil and a great deal more if she had it.

When the creditor is so fortunate as to find property, subject to execution, and thinks, good easy man, that he is about to lay his hands on his own, the debtor takes a stay for three months. At the expiration of the stay, the creditor sues out execution on the stay bond, which is levied; the debtor gives a forthcoming bond and the property is returned to him. This bond of course is forfeited, and a new execution

is sued out and levied on real estate. which is sold, the creditor being the purchaser. The debtor retains possession for a year, during which time he may redeem if he thinks proper by paying not the debt, but the amount bid for the property with interest. And this is called a remedy.

The creditor doubting the integrity or the ability of the debtor to repay him, demands security for his advances. He requires a mortgage or deed of trust to secure him. If the debtor fails to pay, the creditor must have the property appraised at his own expense by two disinterested householders of the township where the sale is to be made. These are to be selected by the nearest justice of the peace, a friend of the debtor. The creditor must make the property bring at the sale two-thirds of the value that the appraising friends of the debtor think it worth. Otherwise there is no sale. If it is personal property it may be sold after three months without regard to value, and if real estate, at the end of one year without regard to value; but the creditor has one year yet, in which to redeem real estate, by paying the amount of the bid and interest at ten per cent. It is provided, however, that where the sole consideration of the debt secured is money lent all this may be waived in the mortgage.

Prior to the exemption of personal property from execution is the relief of the property of the wife from liability for the debts of the husband. We find it stated in the Revised Statutes of 1839 that the property of a female, whether real or personal, whether acquired before or after marriage, in her own right, should not be sold to pay the debts of the husband contracted or damages incurred by him before marriage. By the Act of December the 8th, 1846, a married woman was permitted to hold in her own right any property not acquired from her husband after coverture. Property in slaves was specially favored. Slaves thereafter acquired by a married woman should not be liable for the debts of the husband. Upon the marriage of a woman possessed of slaves that property was exempt from liability for the debts of the husband.

The property, however, was to be scheduled and recorded. By the Constitution of 1868 the property of the married woman, when registered, and not intrusted to the management and control of her husband otherwise than as an agent, should not be liable for his debts. The Act of 1873 exempted her property from liability for all debts of her husband except such as may have been contracted for the support of herself or of her children by her as his agent. The Constitution of 1874 went a step farther and exempted all property of the married woman whether registered or not.

For further evidence of the popular disposition to protect the debtor, reference is made to our usury laws rendering void all contract as to both principal and interest, whereby a greater rate of interest than ten per cent. is reserved. It is difficult to perceive what concern the public have in the rate of interest that one may demand and another give. To be logical the law should make the exaction of usurious interest criminal, and the persons receiving and paying it should be punished.

But such is not the case. The creditor is punished by the loss of his debt and interest, and the debtor is rewarded for his treachery by escaping his debt.

It is not pretended that this review of our collective laws is exhaustive. It is made for the purpose of calling attention to the drift of public sentiment as indicated by our legislation. It is plain that the object of recent laws is not to assist, but to hinder and delay the creditor in the collection of his debt. It seems that the General Assembly thought that they were bound to afford the creditor some remedy, but it was their duty to see that the remedy afforded was inadequate. They "keep the word of promise to the ear, but break it to the hope."

Our procedure for the collection of debts is a shame, and is demoralizing to the creditor and debtor alike. The creditor, ceasing to rely upon the honor and ability of the debtor

to pay, seeks to circumvent him. The debtor, forgetting his obligation to pay his debt, remembers that the creditor did not trust him, but trusted the law, and bids the creditor take to the law for his pay.

In the scramble that ensues all sense of honor is lost. This condition of affairs is directly due to the state of the law. The law for the collection of debts is not honest. Its tendency is to render men dishonest. What is the remedy? Either the debtor should be imprisoned and compelled to surrender his property to the last dime in payment of his debt or no compulsion should be used. There is no middle ground. The reconciliation promised plainly appears. Exempt nothing from the payment of the debt, but give the creditor no action on the contract.

If the creditor is to have a remedy, it should be adequate. The debtor should be compelled to pay. But this will never be. The tendency is all the other way—to impair the remedy. After some further tentative steps in this direction, the action *ex contractu* will fall into “innocuous desuetude” and pass imperceptibly out of use.

It is difficult to perceive upon what principle the public should interfere to enforce the performance of a contract. When parties contract each trusts to the honor and ability of the other to perform his part of the understanding. When one party fails to perform the other has made a mistake. He has mistaken the integrity or the ability of the other side, and strangely enough, rushes immediately into court, and asks to be relieved of the consequence of his error by compelling payment. What a confession of weakness! equal to pleading the “baby act.”

The abolition of the action *ex contractu* will make a great change in our social order, but not as great as we might expect. The number of the adult population that can be made to pay their debts is very small. Only that part of the adult population can be compelled to respond who own more

than ten times the average wealth. There are very few—certainly not more than five per cent. of the total adult population. It is for their benefit that the action *ex contractu* is maintained, that they may have a credit to which their honor might not otherwise entitle them.

It will be impossible to forecast all the consequences that would follow this change. It was thought that the courts had struck a deadly blow at gaming, when they declared that they would not enforce gaming contracts. So, too, it was thought when the General Assembly declared that tipping debts should not be recovered. But gaming and tipping continues with unabated vigor, and that on a credit. The unexpected effort was to convert gaming and tipping debts into debts of honor.

Now, if the action *ex contractu* is abolished, we may safely expect that all debts will become debts of honor. That a debt for food and raiment will be as much a debt of honor as a debt for *gaming* or *tipping*—"a consummation most devoutly to be wished."

No man could carry on business in any community and allow his note to become past due and remain unpaid, whatever his wealth or ability to pay. If the debtor had a defense, he would call for arbitration, and the creditor would be obliged to yield and both parties to abide the award. As the law now stands, the creditor by action demands arbitration, and the debtor is not bound to abide the award. The creditor must compel him to do so if he can.

Another consequence of the change might be safely anticipated. The relation of debtor and creditor would still continue, but would become one of honor, trust and confidence. The parties would be better acquainted with one another. The creditor would take a deeper personal interest in the debtor and look to his honor and ability for the performance of the contract. The creditor, too, would be more cautious, and look to his means of performance rather than to the loop-holes of the law for an escape. It would be more difficult to use large

means profitably, and thereby the distribution of wealth would be rendered more uniform.

Corporate bodies would have to find a soul or act as if they had one. The effect upon the legal fraternity need not be considered, they are generally able to take care of themselves in any emergency. It is suggested that they would find as profitable employment in arbitrations as in contesting attachments.

There would be one exception—the Government, State and Federal. This is obvious; therefore,

Resolved, etc.—SECTION 1. That no action shall be maintained on any contract made on and after the first day of January, 1890.

SEC. 2. That the proceeding section shall not be applicable to the United States, nor to any of them, nor to this State nor any subordinate municipal agency.

Upon motion the Association proceeded to the election of officers for the ensuing year, which resulted in the election of H. G. Bunn for President.

Upon the motion of the Secretary a committee of three was appointed to select Vice-Presidents and report to the Association.

The following committee was appointed: S. W. Williams, Charles Coffin and G. W. Shinn.

The election of Secretary and Treasurer being next in order, resulted in the unanimous election of G. W. Shinn, Secretary, and Geo. E. Dodge, Treasurer.

The following were elected as an Executive Committee for the ensuing year:

H. C. Caldwell, M. W. Benjamin and Geo. B. Rose.

Upon motion, the reports of the Committees on Law and Law Reform, and on Judicial Administration, were postponed until the afternoon session.

Adjourned until 2 o'clock.

AFTERNOON SESSION.

The Association met pursuant to adjournment, and the discussion of the paper of Mr. Cohn was resumed.

Upon motion of W. L. Terry, a committee of three was appointed to draft the bills referred to in the paper of Mr. Cohn, and present to the coming legislature. The following are the committee: M. M. Cohn, W. L. Terry and U. M. Rose.

Upon motion, the resolution introduced by Mr. Cohn was referred to the Committee on Law and Law Reform, with instruction to report to the next meeting of the Association.

The following resolution was introduced by U. M. Rose:

Resolved, That we think it advisable to have a law enacted that shall provide in effect that where a mortgage is given for future supplies, which are afterwards furnished, if any controversy shall arise between the parties as to the amount which the mortgagee is entitled to recover, judgment shall only be given for the cash value of such supplies at the time and place they are furnished, with proper interest.

Which, upon motion of John McClure, was amended as follows, to-wit: "And the rule shall be applied to all purchases, from others, made upon orders given by the mortgagee."

Which said resolution was adopted, and the following special committee was appointed to draft a bill therefor: U. M. Rose, J. E. Williams, John McClure and H. C. Caldwell.

The report of the Committee on Law and Law Reform was taken up, and after discussion, was, upon motion of J. E.

Williams, adopted and referred back to the committee with instructions to draft proper bills to carry out the recommendations in the report, and to be presented by said committee to the present legislature.

The following resolution was introduced by L. A. Byrne :

Resolved: That this Association recommend to the legislature the passage of a law that in all cases where loss has been sustained by fire in the burning of property insured by insurance companies and in the event that suit is brought to recover same, said suit may be brought in any county where the loss was sustained and service upon an agent in any other county shall be good.

Which, upon motion, was referred to the Committee on Law and Law Reform.

The committee appointed to select Vice-Presidents made report by its chairman, S. W. Williams, as follows :

1st	Judicial Circuit	A. F. Mayberry
2d	" "	
3d	" "	 L. Minor
4th	" "	 A. M. Wilson
5th	" "	 R. B. Wilson
6th	" "	 John Fletcher
7th	" "	
8th	" "	 J. H. Crawford
9th	" "	 W. E. Atkinson
10th	" "	
11th	" "	 W. E. Hemingway
12th	" "	 B. T. DuVall
13th	" "	

The report of the Committee on Judicial Administration was taken up and adopted, and upon motion, the same committee was instructed to draft bills embodying the recommendations in said report, and present to the present legislature.

W. E. Atkinson introduced the following resolution, which was adopted :

Resolved: That the Association memorialize the General Assembly of the State of Arkansas to take such steps as may be necessary to have published an annotated edition of the Arkansas Reports from the first to the twenty-eighth inclusive, and sell the same at actual cost.

The Secretary made his annual report, which, upon motion, was referred to the Executive Committee.

The Treasurer made his annual report, showing the amounts received and disbursed, leaving a balance in the treasury of \$254.12.

The report, upon motion, was referred to the Executive Committee.

Upon motion of J. E. Williams, the thanks of the Association was tendered the Committee on Law and Law Reform and Judicial Administration, for their able and efficient work.

The Executive Committee reported that, pursuant to the By-Laws, they have attended to all of the preliminaries connected with the meeting of the State Bar Association for 1887. That they have made arrangements for the annual banquet to be held at Concordia Hall at 8:30 p. m. to-night. They further report that they have examined the reports of the Secretary and Treasurer, and have approved the same.

The report was received and adopted.

S. W. Williams moved that at the banquet at the next annual meeting, provision be made for the ladies, and that each member *in full standing*, be entitled to invite one lady. Carried.

Upon motion of W. L. Terry the thanks of the Association was given to the officers of the Association.

Upon motion the Association adjourned to meet at its next annual meeting, the first Wednesday in January, 1888.

H. G. BUNN, *President*.

G. W. SHINN, *Secretary*.

STANDING COMMITTEES

OF THE

ARKANSAS STATE BAR ASSOCIATION.

On Law and Law Reform—John B. Jones, J. M. Moore, S. R. Cockrill, Geo. H. Sanders and J. M. Montgomery.

On Judicial Administration—C. B. Moore, Geo. E. Dodge, M. M. Cohn, Franklin Doswell and B. T. DuVall.

On Education and Admission to the Bar—J. W. House, D. H. Reynolds, W. H. Pemberton, John M. Rose and Jas. F. Read.

On Appeals and Grievances—W. L. Terry, L. A. Byrne, J. C. England, R. H. Powell and J. C. Tappan.

On Publication—J. E. Williams, L. C. Balch, J. W. Blackwood, Gray Carroll and Jacob Erb.

On Professional Ethics—Sol F. Clark, C. S. Collins, D. W. Jones, G. G. Latta, T. D. Crawford, R. G. Davies, B. B. Hudgins, John J. Horner, L. Minor, G. Quarles, P. O. Thweatt, J. M. Stayton and W. E. Atkinson.

Judiciary—J. W. Butler, G. P. Smoote, W. W. Smith, J. F. Robinson and M. T. Sanders.

On Memorials—J. M. Hewitt, John Fletcher, W. C. Ratcliffe, A. M. Wilson and O. D. Scott.

LIST OF MEMBERS.

Atkinson, W. E.	McClure, John.
Balch, L. C.	McDonough, J. B.
Battle, B. B.	McRae, T. C.
Benjamin, M. W.	Minor, L.
Blackwood, J. W.	Montgomery, J. M.
Bunn, H. G.	Moore, J. M.
Butler, J. W.	Neal, Berkely.
Byrne, L. A.	Newman, C. G.
Caldwell, H. C.	Norton, N. W.
Clark, Sol. F.	Oliphint, T. J.
Coffin, Chas.	Powell, R. H.
Cockrill, S. R.	Quarles, G.
Cohn, M. M.	Ratcliffe, W. C.
Crawford, J. H.	Read, Jas. F.
Crawford, J. W.	Reynolds, D. H.
Crawford, T. D.	Rose, U. M.
Dodge, Geo. E.	Rose, G. B.
Doswell, Franklin.	Scott, O. D.
DuVal, Ben. T.	Shinn, G. W.
England, C. W.	Smith, W. W.
England, J. C.	Stephenson, M. L.
Erb, Jacob	Stayton, J. M.
Fletcher, John	Stuckey, M. M.
Fletcher, Thomas	Thweatt, P. O.
Gibson, T. M.	Trieber, Jacob
Gibbs, M. W.	Turner, B. D.
Harrod, J. H.	Turner, Jesse Jr.
Hewitt, J. M.	Washburn, A. G.

LIST OF MEMBERS—CONTINUED.

Hemingway, W. E.	Waters, Chas. C.
House, J. W.	Watkins, J. A.
Hughes, S. P.	Williams, S. W.
Jones, Dan. W.	Williams, J. E.
Jones, John B.	Wilson, A. M.
Johnson, B. S.	Wilson, R. B.
Leatherman, Leland.	Yancey, J. C.
Mayberry, A. F.	

MEETING OF EXECUTIVE COMMITTEE.

LITTLE ROCK, ARK., January 7, 1887.

The Executive Committee of the Bar Association met pursuant to notice at the United States Court Room, chambers' of Judge H. C. Caldwell. Present, H. C. Caldwell, M. W. Benjamin, Geo. B. Rose, and the Secretary and Treasurer.

The Committee was organized by electing H. C. Caldwell Chairman.

Upon motion it was decided to hold the Seventh Annual Meeting of the State Bar Association in the United States Court Room in the City of Little Rock, on Wednesday the 4th day of January, 1888.

Upon motion the following programme was adopted for the next annual meeting :

Annual Address—John McClure.

The following were selected to prepare and read papers :
W. E. Hemingway, J. W. Butler, W. E. Atkinson, John M. Moore and S. R. Cockrill.

Upon motion the Committee adjourned to the next quarterly meeting.

H. C. CALDWELL, *Chairman.*

G. W. SHINN, *Secretary.*

CONSTITUTION.

NAME.

Article 1. The name of this Association is the Arkansas State Bar Association. Its objects are to uphold the honor of the legal profession, inculcate sound professional ethics, promote the administration of justice and the science of jurisprudence, and establish and maintain cordiality and fraternity among lawyers.

OFFICERS.

Article 2. The officers of this Association shall be a President, one Vice-President from each Judicial Circuit of the State of Arkansas, a Secretary and a Treasurer, who shall hold office for one year and until their successors are elected, whose terms of office shall begin at the close of the annual meeting at which they may be elected.

Article 3. The Secretary, Treasurer, and three members, to be chosen annually, shall constitute an Executive Committee, who shall meet quarterly, a majority thereof forming a quorum for business. This committee shall have full power to do anything necessary to be done for the promotion and well-being of the Association during recess or vacation of the same, subject to the revision of the Association at the next annual meeting.

MEMBERS.

Article 4. All persons, members of the bar of Arkansas, who shall sign this Constitution at its organization, shall be members thereof; and thereafter every member of the bar of

Arkansas licensed to practice in her Circuit Courts, of good moral character, shall be eligible to membership, and application for membership may be received by the Executive Committee, and if a majority of said committee shall favor said application, then the application shall be laid before the next annual meeting, and if three-fourths of the members at such annual meeting shall favor such application, then the applicant shall become a member. But if the application be rejected by said committee, such rejection shall not bar the right of such applicant to present his name for membership to the Association at the annual meeting, which vote shall be by secret ballot, and any applicant not receiving such favorable vote shall be declared rejected.

QUORUM OF THE ASSOCIATION.

Article 5. The President, or a Vice-President, and ten members shall constitute a quorum for business, and a less number, or the Executive Committee, may adjourn the Association from day to day for a quorum.

DUTIES OF OFFICERS.

Article 6. The President shall preside, when present, and in his absence the Vice-Presidents shall preside in the order of the number of their circuits; that is, if the President be absent the Vice-President for the first circuit shall preside; if both be absent then the second circuit, and so on.

The Vice-Presidents shall, at least one month in advance of the annual meetings, notify the members of his circuit, and appoint at least one member for each county of his circuit, wherein a member may reside, to attend the next annual meeting of the Association, and advise said member of it, and also inform the secretary.

It shall be the duty of the Secretary to keep a record of the proceedings of the Association of the Executive Committee, correspond with other Associations, record the Constitution and By-Laws, keep a list of members, record the names

of delegates reported to him by the Vice-Presidents for each annual meeting, and present the same at such meeting, collect all moneys due, keep an account thereof and pay them to the Treasurer, and do such other duties as may by the By-Laws be required.

The Treasurer shall keep the money, and pay it out by order of the Executive Committee or the Association, keeping just accounts.

The Secretary and Treasurer shall render an account to the Association, at each annual meeting, of all money, and to the Executive Committee as often as it may require.

.COMMITTEES.

Article 7. The Association shall have such number of standing and special committees as it may order. Until otherwise ordered, the President shall appoint the following standing committees at each annual meeting, who, with all the officers elected at such meeting, shall serve until the end of the next annual meeting, to-wit :

First. On Law and Law Reform.

Second. On Judicial Administration.

Third. On Education and Admission to the Bar.

Fourth. On Appeals and Grievances.

Fifth. On Publication.

Sixth. On Professional Ethics.

A majority of any committee shall form a quorum. Said committees, except that upon Professional Ethics, shall consist of five members; the Committee on Professional Ethics shall consist of one member from each circuit, and they shall have power, and it shall be their duty, to prefer charges in the circuit or such other court as may have jurisdiction, against any lawyer, whether a member of the Association or not, who may be guilty of gross unprofessional conduct, coming within the statutes of Arkansas, for which he may be liable by law to

be disbarred, and such other matters as may be committed to them by the By-Laws. Such committee shall report to the Executive Committee all cases wherein charges are preferred, and the case shall be docketed by said Executive Committee, and it shall extend such aid as may be needed to prosecute the charges. Three members of said committee shall constitute a quorum to do business.

BY-LAWS AND AMENDMENTS.

Article 8. By-Laws may be adopted and altered or repealed by a majority of the members present at any annual meeting, and in like manner the Constitution may be amended or changed by a vote of two-thirds.

DUES.

Article 9. Each member shall pay \$5 per annum dues, payable in advance, and if not paid on or before the thirty-first day of December in every year, the name of such person shall be dropped from the rolls, and he shall not be restored to membership until all dues are paid. At each meeting, before any vote is taken, the Secretary shall call the roll of all members who have paid their dues, and thereby ascertain who are members, and no person who is not such a member shall vote or hold office.

ANNUAL MEETINGS.

Article 10. This Association shall meet annually, at such place as the Executive Committee may select, on the first Wednesday of January in each year. And if no place is previously selected the meeting shall be at Little Rock, Ark. It shall be the duty of the Executive Committee to select the place at least two months prior to said meeting, and require the Secretary within two weeks thereafter to notify each member by mail.

COMMITTEE ON JUDICIARY.

Article 11. There shall be appointed a committee of five, to be called Judiciary; and before which committee charges

may be preferred against any member for unprofessional conduct, or violation of ethics, or matter for which an attorney may be disbarred. Said committee shall have full power to hear and determine said charges, and expel the accused if the charges are sustained; but in all such cases the accused shall have the right of appeal to the next annual meeting, and during pendency of the appeal shall be suspended from the Association.

AMENDMENTS.

I.

When the Bar Association is not in session, a majority of the Executive Committee may admit new members; but their action, in all cases, shall be liable to be revoked by the Association at any pending or the next regular meeting.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I. The Executive Committee, at its first meeting after annual meetings, shall select some person to make an address at the next annual meeting, and not exceeding six members of the Association to read papers.

II. The order of exercises at the annual meeting shall be as follows:

- (1.) Opening Address by the President.
- (2.) Nomination and election of members.
- (3.) Report of Secretary and Treasurer.
- (4.) Report of Executive Committee.
- (5.) Reports of Standing Committees, in the order named in Article VII of the Constitution.
- (6.) Reports of Special Committees.
- (7.) Nomination and election of officers.
- (8.) Reading of papers provided for in Section I of the By-Laws.
- (9.) Miscellaneous business.

The address to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the annual meeting.

III. No person shall speak more than ten minutes at a time, nor more than twice on one subject. A stenographer may be employed by the Executive Committee at each annual meeting.

IV. All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of committees, and all proceedings of the annual meeting shall be printed; but no other address made, or paper presented, shall be printed, except by order of the Committee on Publication.

V. The terms of office of all officers elected at any annual meeting shall commence at the adjournment of such meeting.

OFFICERS AND COMMITTEES.

VI. The President shall appoint all committees within thirty days after the annual meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. All standing committees shall have authority to fill all vacancies existing and occurring in their respective bodies.

VII. The Executive and other standing committees shall meet on the day preceding each annual meeting, at the place where the same is to be held, at such hour as their respective chairman may appoint.

VIII. The Committee on Publication shall also meet within one month after their appointment, at such time and place as the chairman shall appoint.

IX. Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

X. At any of the meetings of the Association, members of the bar of any foreign country, or of any State, who are not members of the Association, may be admitted to the privileges of the floor during such meeting.

AMENDMENT.

I.

It shall be the duty of each party elected to read a paper before the Association, to notify the Executive Committee

sixty days before the annual meeting, of the subject he has selected, and the committee shall give at least thirty days' public notice of the subjects the papers are to be upon, and, as soon as read, each paper shall be subject to discussion by the Association.

RULE.

I.

That the acting President request the incoming President to appoint the various standing committees for the ensuing year.

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